

EMPTY HOOKS: THE NATIONAL OCEAN POLICY IS THE LATEST THREAT TO ACCESS FOR RECREATIONAL AND COMMERCIAL FISHERMEN

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES, WILDLIFE,
OCEANS AND INSULAR AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

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**OVERSIGHT HEARING ON “EMPTY HOOKS:
THE NATIONAL OCEAN POLICY IS THE
LATEST THREAT TO ACCESS FOR
RECREATIONAL AND COMMERCIAL FISHER-
MEN.”**

**Thursday, March 22, 2012
U.S. House of Representatives
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
Committee on Natural Resources
Washington, D.C.**

The Subcommittee met, pursuant to notice, at 9:30 a.m., in Room 1324, Longworth House Office Building, Hon. John Fleming [Chairman of the Subcommittee] presiding.

Present: Representatives Fleming, Wittman, Duncan, Southerland, Runyan, Sablan, Faleomavaega, Bordallo, and Markey.

Dr. FLEMING. The Subcommittee will come to order. The Chairman notes the presence of a quorum. Good morning. Today the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs will conduct an oversight hearing titled, “Empty Hooks: The National Ocean Policy is the Latest Threat to Access for Recreational and Commercial Fishermen.”

Under the Committee Rule 4(f), opening statements are limited to the Chairman and Ranking Member of the Subcommittee, so that we can hear from our witnesses more quickly. However, I ask unanimous consent to include any other Members’ opening statements in the hearing record, if submitted to the Clerk by close of business today.

[No response.]

Dr. FLEMING. Hearing no objection, so ordered.

STATEMENT OF THE HON. JOHN FLEMING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Dr. FLEMING. I would like to welcome our witnesses and thank them for coming to Washington to present their testimony. As many of you are aware, coastal communities are feeling the pain of tough economic times, and fishermen are having a hard time making ends meet. Both recreational and commercial fishermen are seeing their harvest levels reduced, the areas available to them diminished, and the cost of doing business increased.

This Subcommittee has heard loud and clear from many parts of the country that commercial and recreational fishing are being restricted due to inadequate or old data. While Congress has required that science should be underpinning of management decisions, this Subcommittee has heard testimony that layer upon layer of precaution are being included in the scientific calculations to set

harvest levels. This overly precautionary level of management is affecting the economies of our coastal communities.

In addition to inadequate data, fishermen are seeing their access to fishing grounds restricted. Efforts to create marine-protected areas are growing even as questions about their effectiveness are being raised. At an earlier hearing, we heard that efforts such as the California Marine Life Protection Act were disadvantaging fishermen, while increasing the cost of management and enforcement, and were being imposed with little, if any, input from fishermen.

Currently, only 272 out of the 556 national wildlife refuges are open to recreational fishing. And unless there are special circumstances, all of these refuges are closed to commercial fisheries. In the past, this was not much of a concern, because many—not many refuges extended into the marine environment. However, as more refuges and marine monuments are created or restrictions implemented, this lack of basic access is disturbing.

In addition, I understand the National Park Service is now undertaking a policy to restrict recreational fishing access to national parks restricting fishermen in one park at a time. And, at the same time that scientists are recognizing the importance of man-made structures to rebuilding the red snapper population in the Gulf of Mexico, the Department of the Interior is pushing to remove some of these same structures at an expedited rate without regard to the effect on fisheries.

And to make matters worse, a few years ago the Environmental Protection Agency proposed regulating rainwater that comes off the decks of fishing vessels. Without congressional intervention, this would have already have been implemented, and thousands of fishermen would have been required to either collect rainwater or apply for discharge permits from the EPA.

With all this as a backdrop, the Obama Administration has proposed a National Ocean Policy that will add new regulations and implement closures that will affect fishermen, as well as inland activities. Of the nine national priority objectives in the National Ocean Policy, four call for closed areas or restrictions on activities, including fishing. To make matters worse, the policy requires that all of these decisions be made by Federal officials behind closed doors.

There is no opportunity for direct stakeholder participation in these decisions. At a time of tight budgets, I believe this new policy is draining resources away from existing missions and duties of a number of Federal agencies. Yet this administration either cannot or will not answer questions about where the funding for this far-reaching national zoning effort is coming from. This Subcommittee will examine these funding questions, and will continue to raise concerns with the National Ocean Policy and its objectives.

I appreciate the witnesses being here today, and I look forward to your testimony. I now recognize our Ranking Member, Mr. Sablan, for any statement he would like to make.

[The prepared statement of Dr. Fleming follows:]

**Statement of The Honorable John Fleming, Chairman,
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs**

I would like to welcome our witnesses to today's hearing titled *"Empty Hooks: The National Ocean Policy Is The Latest Threat to Access for Recreational and Commercial Fishermen"*.

As many of you are aware, coastal communities are feeling the pain of tough economic times and fishermen are having a hard time making ends meet. Both recreational and commercial fishermen are seeing their harvest levels reduced, the areas available to them diminished, and the cost of doing business increased.

This Subcommittee has heard loud and clear from many parts of the country that commercial and recreational fishing are being restricted due to inadequate or old data. While Congress has required that science should be the underpinning of management decisions, this Subcommittee has heard testimony that layer upon layer of precaution are being included in the scientific calculations to set harvest levels. This overly precautionary level of management is affecting the economies of our coastal communities.

In addition to inadequate data, fishermen are seeing their access to fishing grounds restricted. Efforts to create Marine Protected Areas are growing even as questions about their effectiveness are being raised. At an earlier hearing, we heard that efforts such as the California Marine Life Protection Act were disadvantaging fishermen while increasing the costs of management and enforcement—and were being imposed with little if any input from the fishermen. Currently, only 272 out of the 556 National Wildlife Refuges are open to recreational fishing and, unless there are special circumstance, all of these Refuges are closed to commercial fisheries. In the past, this was not as much of a concern because not many Refuges extended into the marine environment; however, as more Refuges and Maine Monuments are created or restrictions implemented, this lack of basic access is disturbing. In addition, I understand the National Park Service is now undertaking a policy to restrict recreational fishing access to National Park's—restricting fishermen in one Park at a time.

And at the same time that scientists are recognizing the importance of man-made structures to rebuilding the red snapper population in the Gulf of Mexico, the Department of the Interior is pushing to remove some of these same structures at an expedited rate without regard to the effect on fisheries. And to make matters worse, a few years ago the Environmental Protection Agency proposed regulating rainwater that comes off of the decks of fishing vessels. Without Congressional intervention, this would have already been implemented and thousands of fishermen would have been required to either collect rainwater or apply for discharge permits from the EPA.

With all of this as a backdrop, the Obama Administration has proposed a National Ocean Policy that will add new regulations and implement closures that will affect fishermen as well as inland activities. Of the nine National Priority Objectives in the National Ocean Policy, four call for closed areas or restrictions on activities—including fishing. To make matters worse, the Policy requires that all of these decisions be made by federal officials behind closed doors. There is no opportunity for direct stakeholder participation in these decisions.

At a time of tight budgets, I believe this new Policy is draining resources away from existing missions and duties of a number of federal agencies. Yet this Administration either cannot, or will not, answer questions about where the funding for this far-reaching national zoning effort is coming from.

This Subcommittee will examine these funding questions and will continue to raise concerns with the National Ocean Policy and its objectives.

I appreciate the witnesses being here today and I look forward to your testimony.

**STATEMENT OF THE HON. GREGORIO SABLAN, A DELEGATE
IN CONGRESS FROM THE NORTHERN MARIANA ISLANDS**

Mr. SABLAN. Thank you very much, Chairman Fleming, and good morning, everyone.

In the Northern Mariana Islands, we are fortunate to have the beautiful coral reefs of Laolao Bay. With thousands of visitors each year, 47 percent of which are recreational fishermen, Laolao is a vital component to Saipan's tourism industry. Some of these reefs are valued at over \$10 million per square kilometer. However, ille-

gal burning of forests and the subsequent erosion have caused water quality to decline, which has reduced the number of dominant coral species in the area from 15 to 5.

Through a stakeholder-driven initiative, our local government and citizens worked with Federal agencies to develop an ecosystem-based management strategy. These local and Federal partnerships help fund and implement sustainable practices on land that will improve water quality, create over 100 jobs, and secure the health of our coral reef ecosystems, which are vital to our economy, including the recreational fishing industry.

The President's National Ocean Policy will facilitate this type of comprehensive ecosystem-based management that is critical to the health of our oceans and the fish populations that sustain the livelihood of so many people in this room. The United States and Territories have exclusive economic jurisdiction over approximately 4.5 million square miles of ocean, which is larger than the total combined land area of all the States and Territories.

Our coastal counties, which make up only 18 percent of the country's land area, are home to roughly 36 percent of our Nation's population. That is 108 million—over 108 million people. And these numbers are steadily increasing. Growing uses within our ocean and coastal areas are placing significant pressures on our natural resources.

The President, utilizing input from thousands of local, State, Tribal, Territorial, and stakeholders, have provided a unifying structure to develop management strategies for our oceans, coasts, and Great Lakes. This is not a Federally mandated process. This does not create more regulations. But it does offer tools for regions to engage stakeholders in a scientifically informed, comprehensive ocean-planning process. Moreover, the implementation plan is still in draft form and open for public comment. And, therefore, it has not been finalized.

Fourteen States and Territories have already incorporated stakeholder-driven, comprehensive ocean planning into their management plans. Efficient interaction between State and Federal agencies is not only critical to the implementations of this plan, but necessary during these austere financial times. The National Ocean Policy will ensure these agencies are working transparently to facilitate the work of state and regional plans.

Personally, our ocean economy supports over 2.8 million jobs, including tourism, recreation, and fishing sectors. Commercial fishing alone contributes over \$70 billion annually to our Nation's economy, while over 25 million Americans fish recreationally every year. It is critical that fishermen are involved in the earliest communications of the ocean-planning process. The National Ocean Policy provides the framework to bring fishermen into the planning process with mechanisms to establish any number of planning advisory boards, in addition to the inclusion of fisheries management councils on the regional planning bodies.

Let us move forward with the planning process where conflicts in ocean use can be minimized, and where healthy ocean ecosystems support vibrant, traditional, and new ocean uses alike. And I join the Chairman in wanting to hear what everyone has to say in today's hearing. Thank you very much for joining us.

[The prepared statement of Mr. Sablan follows:]

Statement of The Honorable Gregorio Kilili Camacho Sablan, Ranking Member, Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs

Thank you, Chairman Flemming.

In the Northern Marianas Islands, we are fortunate to have the beautiful coral reefs of Laolao Bay. With thousands of visitors each year, 47% of which are recreational fishermen, Laolao is a vital component to Saipan's tourism industry. Some of these reefs are valued at over \$10 million per square kilometer. However, illegal burning of forests and the subsequent erosion have caused water quality to decline, which has reduced the number of dominant coral species in the area from 15 to 5. Through a stakeholder-driven initiative, our local government and citizens worked with federal agencies to develop an ecosystem based management strategy.

These local and federal partnerships helped fund and implement sustainable practices on land that will improve water quality, create over 100 jobs and secure the health of our coral reef ecosystems, which are vital to our economy, including the recreational fishing industry.

The President's National Ocean Policy will facilitate this type of comprehensive ecosystem based management that is critical to the health of our oceans and the fish populations that sustain the livelihood of so many people in this room.

The United States and territories have exclusive economic jurisdiction over approximately 4.5 million square miles of ocean, which is larger than the total combined land area of all the states and territories. Our coastal counties, which make up only 18% of the country's land area, are home to 108.3 million people—roughly 36% of our nation's population—and these numbers are steadily increasing. Growing uses within our ocean and coastal areas are placing significant pressures on our natural resources.

The President, utilizing input from thousands of local, state, tribal, territorial and stakeholders, has provided a unifying structure to develop management strategies for our oceans, coasts, and Great Lakes. This is not a federally mandated process; this does not create new regulations; but, it does offer tools for regions to engage stakeholders in a scientifically informed, comprehensive ocean planning process. Furthermore, the Implementation Plan is still in draft form and open for public comment and therefore has not been finalized.

Fourteen states and territories have already incorporated stakeholder-driven comprehensive ocean planning into their management plans. Efficient interaction between state and federal agencies is not only critical to the implementation of these plans, but necessary during these austere financial times. The National Ocean Policy will ensure these agencies are working transparently to facilitate the work of state and regional plans.

Currently, our ocean economy supports over 2.8 million jobs, including tourism, recreation, and fishing sectors. Commercial fishing alone contributes over \$70 billion annually to our nation's economy, while over 25 million Americans fish recreationally every year. It is critical that fishermen are involved in the earliest communications of the ocean planning process. The National Ocean Policy provides a framework to bring fishermen into the planning process with mechanisms to establish any number of planning advisory boards in addition to the inclusion of Fisheries Management Councils on the Regional Planning Bodies. Let's move forward with a planning process where conflicts in ocean use can be minimized and where healthy ocean ecosystems support vibrant traditional and new ocean uses alike.

Dr. FLEMING. I thank the Ranking Member. Now we will turn to our panel.

First of all, like all witnesses, your written testimony will appear in full in the hearing record, so I ask that you keep your oral statements to five minutes, as outlined in our invitation letter to you, and under Committee Rule 4(a). Our microphones are not automatic, so please push the button when it is your time to talk, and make sure it is in front of you, because your voice cannot be picked up unless it is reasonably close to your mouth.

Also, our timing lights, I will explain those briefly. You have five minutes to speak. You will be, in the first four minutes, under

green light, then yellow for the last minute. And when it turns red, we ask that you go ahead and conclude your remarks.

Now I would like to ask unanimous consent to recognize Mr. Southerland to introduce one of our witnesses today.

[No response.]

Dr. FLEMING. Without objection.

Mr. SOUTHERLAND. Thank you, Mr. Chairman. It is great to have the wonderful panel we have here today. And one of our panelists today is a gentleman who is extremely important to our fishing efforts in our neck of the woods. I live in Panama City, Florida. And so today we are honored to have Captain Bob Zales.

Captain Zales has been involved in fisheries since he entered the business with his family, a charter fishing business, back in our home district of Panama City, Florida, in 1966, and has been involved in fishing for over 47 years. In 1986 he began his interest in fishery management, and working to represent his fellow fishermen, providing expert testimony and serving on various advisory panels for local, State, and Federal agencies, working to ensure that common sense is applied to the management of our natural resources.

He has been active in local and national charterboat associations, and has been a member of the National Association of Charterboat Operators since 1991, a board member since 1997, and president since 1999. Captain Zales has vast knowledge of the many regulatory agencies and the regulations affecting the charter-for-hire industry. He is recognized nationally as an expert in his field. It is great to have Captain Zales here. And I welcome him to the panel today. Thank you. Mr. Chair, I yield back.

Dr. FLEMING. I thank the gentleman from Florida. Next I would like to introduce Mr. Gary Zurn, Senior Vice President, Marketing, Big Rock Sports, LLC; Mr. Terry Gibson, Principal, North Swell Media, LLC; Mr. George J. Mannina—am I saying that correctly? A junior partner, Nossaman, LLC. And Mr. Justin LeBlanc, Federal Representative, United Charter Boats. Catcher? Oh, OK. We had a typo. United Catcher Boats.

OK. Captain Zales, you may begin. Five minutes are yours, sir.

**STATEMENT OF ROBERT F. ZALES, II, PRESIDENT,
NATIONAL ASSOCIATION OF CHARTERBOAT OPERATORS**

Mr. ZALES. Thank you. And thank you, Steve, for that kind introduction. Chairman Fleming, Ranking Member Sablan, and members of the Subcommittee, my name is Robert F. Zales, II, and I am appearing today on behalf of the National Association of Charterboat Operators. I wish to thank you, my representative, Steve Southerland, and the other members of the Committee for your kind invitation to present testimony.

NACO is a non-profit association representing charterboat owners and operators across the United States, including the Great Lakes. I also serve on the board of several other recreational fishing associations, as well as the National Ocean Policy Coalition. I have been involved in fishing for over 47 years, with over 21 years of that time involved with local, state, and Federal fishery management; providing expert testimony; serving on a host of advisory

panels; and working to ensure that reason and common sense are applied to the management of our natural resources.

One stroke of a pen has expanded to a proposed National Ocean Policy Implementation Plan that will create regional planning bodies who will adopt a comprehensive national ecosystem-based management principle, implement coastal and marine spatial planning and management, and a host of other management objectives. All these proposals are already being researched and, in some cases, proposed under the Magnuson-Stevens Fishery Conservation and Management Act and other Federal management efforts. Apparently, Mr. Chairman, you and your colleagues are not necessary to the proper management and care of our natural marine and land-based resources, as Congress has been left totally out of the NOP process.

According to NOAA/NMFS, recreational salt water fishing, the commercial fishing industry, and seafood retailers combine to contribute over \$208 billion, and provided over 1,811,000 jobs in 2009. This impact was derived on less than 20 percent of the seafood provided locally, as over 80 percent of our nation's seafood is imported.

The current NOP process suggests that the nation's stakeholders have been actively involved and able to provide input. This is blatantly untrue. The fast-tracking underground, lack of adequate public notice, and haphazard manner where vital stakeholders are left out by the administration is clear indication they want this policy to be fully implemented before anyone is aware of the real impacts of the proposed policy.

Under the CMSP process, there are nine regional planning bodies proposed that will include membership of Federal, State, and Tribal representatives. No fishing representatives are to be included. We already have eight Regional Fishery Management Councils and the NOAA/NMFS, along with EPA, the United States Coast Guard, Fish and Wildlife Service, Bureau of Ocean Energy Management, 300 State fishery commissions, coastal State resource management agencies, and a host of others providing management of our resources. Do we need another layer of unaccountable Federal bureaucrats costing taxpayers millions of dollars on top of all these to provide management?

Few Federal legislators know where the funding for the NOP comes from now. Who will control the funding and oversight in the future? No fishing seasons, overly restrictive bag limits and quotas, closed areas to boating and fishing, the Endangered Species Act, Clean Water Act, EPA engine emission regulations, marine-protected areas, marine mammal interactions, gear restrictions, U.S. Coast Guard regulations that include a host of vessel safety and manning requirements, medical review process, navigation restrictions, the FCC radio license and requirements and more adversely regulating fishermen.

The NOP process will create new and expanded regulatory requirements creating more regulatory burdens and expanding costs to our businesses. According to information provided at a recent hearing, Representative Southerland found, in the final recommendations of the Interagency Ocean Policy Task Force July 19, 2010, on page 30 it states, "The plan would be adapted to allow for more modification and addition of new actions based on new infor-

mation and changing conditions.” Their effective implementation would also require clear and easily understood requirements and regulations where appropriate, that include enforcement as a critical component.

While several lead agency heads have stated the NOP has no regulatory authority, the NOP will be adding new and expanded regulations on already-over-regulated industries and activities. Fishing activity and boating are now at an all-time low. Allowing the NOP to continue without congressional oversight will continue to reduce the fishing and boating activity which will result in lost jobs, lost wages, and lost taxes.

The NOP does nothing but add new layers of unaccountable Federal Government employees, while doing nothing to enhance our economy or our resources. Everything in the NOP process is already being implemented, proposed, or thought of. In addition, the NOP continues the strangulation of our offshore oil and gas industries by further restricting the exploration, mining, and production of these resources. In the Gulf of Mexico, the expanded effort to remove non-productive oil and gas platforms that have become essential fish habitat is a growing problem, when the NOAA/NMFS requires sustainable fisheries. How do you sustain a resource without habitat?

In lieu of the NOP, a government agency coordinator could ensure all agencies work together so projects, permitting, regulatory actions, and continued enhancement of our marine and land resources are coordinated. This coordination of agencies should reduce the burdens placed on the fishing and other industries. In these difficult economic times, this would save taxpayers countless dollars, and would increase regulatory burdens and provide a real common-sense approach to making government more efficient and less costly.

Mr. Chairman, this concludes my testimony. Thank you.

[The prepared statement of Mr. Zales follows:]

**Statement of Capt. Robert F. Zales, II, President,
National Association of Charterboat Operators**

Chairman Fleming, Ranking Member Sablan, and Members of the Subcommittee, my name is Robert F. Zales, II and I am appearing today on behalf of the National Association of Charterboat Operators (NACO). I wish to thank you; my Representative Steve Southerland and the other Members of the Committee for your kind invitation to present testimony on the Threat to Access for Recreational and Commercial Fishermen by the National Ocean Policy (NOP).

NACO is a non-profit 501 (c) (6) association representing charter boat owners and operators across the United States including the Great Lakes. I also serve on the Board of several other recreational fishing associations and am involved with a national coalition of recreational for hire, private recreational, and commercial fishing associations as well as the National Ocean Policy Coalition. I have been involved in fishing for over 47 years with over 21 years of that time involved with local, state, and federal fishery management providing expert testimony, serving on a host of advisory panels, and working to ensure that reason and common sense are applied to the management of our natural resources.

On July 19, 2010 President Obama signed and executed Presidential Executive Order 13547 creating the National Ocean Policy and resulting National Ocean Council. Less than two years later, this one stroke of a pen has expanded to a proposed National Ocean Policy Implementation Plan that will create Regional Planning Bodies who will adopt a comprehensive National ecosystem based management principal, implement comprehensive, integrated, ecosystem based coastal and marine spatial planning and management, and a host of other management objectives. All of these proposals are already being researched and in some cases proposed

under the Magnuson-Stevens Fishery Conservation and Management Act and other federal management efforts. Apparently, Mr. Chairman, you and your colleagues are not necessary to the proper management and care of our natural marine and land based resources as Congress has been left totally out of the NOP process.

Charter, commercial, and saltwater recreational fishing is extremely important to the United States, both economically and socially. According to the NOAA publication *Fisheries Economics of the United States for 2009* Recreational Saltwater Fishing produced sales impacts from angling and durable expenditures totaling **\$50 BILLION and value added impacts of \$23 BILLION while providing over 327,000 JOBS** in 2009. In addition the Commercial Fishing industry provided over **1 MILLION JOBS, \$116 BILLION in sales and \$32 BILLION in income impacts**. Seafood Retailers added another **484,000 JOBS and contributed another \$10 BILLION** to the nations' economy. This impact is derived on less than 20% of the seafood provided locally as over 80% of our Nation's seafood is imported. Just in my small coastal community of Panama City, Florida, according to the local Tourist Development Council, **15% of Tourism Dollars** comes from saltwater recreational fishing. All of these industries depend on our healthy and resilient resources and must have flexibility in management in order to survive.

The current NOP process, has from day one, suggested that the Nation's stakeholders have been actively involved and able to provide input. The true nature of the activity shows this is blatantly untrue. The fast tracking underground, lack of adequate public notice, and haphazard manner where vital stakeholders are left out by the administration is clear indication they want this policy to be fully implemented before anyone is aware of the real impacts of the proposed policy. One has to wonder, if a policy is so great then why has Congress been left out of the process and why do the citizens of this country know so little?

Under the Coastal and Marine Spatial Planning process there are nine (9) Regional Planning Bodies proposed that will include membership of Federal, State, and Tribal representatives, no fishing representatives are to be included. How does this process include Stakeholders such as Recreational and Commercial fishermen who may be affected the most? We already have eight (8) Regional Fishery Management Councils and the agencies of NOAA/NMFS along with EPA, the United States Coast Guard, the Fish and Wildlife Service, the Bureau of Ocean Energy Management, three (3) Interstate Fishery Commissions, coastal State Resource Management Agencies, and a host of others providing management of our resources. Why do we need another bureaucratic entity costing taxpayers millions of dollars on top of all of these to provide more management? Few federal legislators know where the funding for the NOP comes from now, who will control the funding and oversight in the future?

Recreational and Commercial Fishermen are currently over regulated and negatively impacted in every arena. No fishing seasons, overly restrictive bag limits and quotas, closed areas to boating and fishing, the Endangered Species Act, the Clean Water Act, EPA Engine Emission regulations, Marine Protected Areas, Marine Mammal Interactions, gear restrictions, U. S. Coast Guard regulations that include a host of vessel safety requirements, specific manning requirements, life saving requirements, licensing, drug and alcohol testing, medical review process, navigation restrictions, FCC radio licensing and requirements, and more. Every agency and every requirement costs fishermen and our communities dollars.

The Fishing Industry (recreational and commercial) cannot absorb any more regulatory burden. Many fishermen have left fishing because they have simply been regulated out of business. The costs and regulatory burdens have driven private recreational fishermen to find other forms of recreation. They have forced the recreational for-hire owner out of business because the consumer is unwilling to continue to pay more for the government requirements as the costs of regulations cannot be passed on. Commercial fishermen are being forced out of business because the profit margins are not sustainable. All of this also impacts the support businesses such as tackle shops, boat builders, and seafood dealers.

The NOP process has the potential and is likely to create new and expanded regulatory requirements in addition to those we have, creating more regulatory burdens and expanding costs to our businesses. According to information provided at a recent hearing by Representative Southerland found in the *Final Recommendations of the Interagency Ocean Policy Task Force, July 19, 2010* on page 30, it states "The plans would be adaptive to allow for modification and addition of new actions based on new information or changing conditions. Their effective implementation would also require clear and easily understood requirements and regulations, where appropriate, that include enforcement as a critical component." While several lead agency heads have stated the NOP has no regulatory authority, it is clear that the NOP

will be adding new and expanded regulations on already overly regulated industries and activities.

Fishing activity and boating are at an all time low. Government requirements and expense keep growing and allowing the NOP to continue without Congressional oversight will only continue to reduce this fishing and boating activity which will result in lost JOBS, lost WAGES, and lost TAXES which will harm families and our communities. The NOP does nothing but add new layers of unaccountable federal government employees while doing nothing to enhance our economy or our resources. Everything the NOP proposes is already being implemented, proposed, or thought of.

In addition the NOP continues the strangulation of our offshore oil and gas industries by further restricting exploration, mining, and production of these resources. This further hampers fishermen due to the ever increasing fuel costs. In the Gulf of Mexico the expanded effort to remove non productive oil and gas platforms that have become essential fish habitat is a growing problem when the NOAA/NMFS requires sustainable fisheries. How do you sustain a resource without habitat?

In lieu of the NOP, a government agency coordinator could ensure all agencies work together so projects, permitting, regulatory actions, and continued enhancement of our marine and land resources are coordinated. This coordination of agencies should reduce the burdens placed on the fishing and other industries. In these difficult economic times, this would save tax payers countless dollars, would not increase regulatory burdens, and provide a real common sense approach to making government more efficient and less costly.

Mr. Chairman, this concludes my testimony. Again, I truly appreciate the invitation and opportunity to provide you and the committee with this information. I will be pleased to respond to any questions.

Dr. FLEMING. Thank you, Captain Zales. Thank you for your testimony.

And next up is Mr. Zurn.

You are now recognized, sir, for five minutes.

**STATEMENT OF GARY ZURN, SENIOR VICE PRESIDENT
MARKETING, BIG ROCK SPORTS, LLC**

Mr. ZURN. Good morning, Mr. Chairman and members of the Subcommittee. Thank you for the opportunity to speak with you today.

My name is Gary Zurn. I am Senior Vice President and part owner of Big Rock Sports, the wholesale distributor of fishing, marine, camping, and shooting sports products. Our offices are headquartered in Newport, North Carolina, with five distribution facilities across the U.S. and three in Canada. I am here today not only to represent my company and our 15,000 outdoor sporting goods retailers, but also the millions of recreation anglers across the Nation who are facing increasingly complex and restrictive fishing regulations, rising gas prices, and unprecedented new threats to fishing access, particularly in our marine waters.

Recreational fishing generates a powerful economic engine that provides employment for approximately one million Americans, and the bulk of the funding for aquatic resources management and conservation. Anglers and businesses depend on healthy and abundant fisheries. But as the Nation strives to end over-fishing and rebuild depleted fish stocks, we have often struggled to balance resource conservation with preserving the economic and social values of recreational fishing.

Recent changes in 1996 and 2006 to our Federal fisheries management law, the Magnuson-Stevens Act, have made significant strides in rebuilding fisheries. However, these improvements have come with considerable sacrifices made by fishermen. Many provi-

sions of the law are predicated on timely and quality scientific fisheries data, which is sorely lacking across NOAA Fisheries. This overall lack of quality data, combined with strict legal requirements to end over-fishing and set catch limits on all stocks under Federal management, has resulted in decisions that have taken anglers off the water, cost jobs, and degraded the public's trust in NOAA Fisheries.

Another fisheries management approach to place areas of ocean off-limits to all fishing has steadily gained more attention. This concept, commonly known as marine reserves, marine-protected areas, or MPAs, is now often proposed as a catch-all solution to any aquatic resources management issues, without regard for the negative economic and jobs impact these restrictions will have.

California is finalizing a state-wide MPA effort which is not needed, which it cannot pay for, that is placing 15 to 20 percent of the State's most productive coastal waters off limits to fishing, through a process called the Marine Life Protection Act Initiative.

On the other side of the country, officials at Biscayne National Park are proposing to close a significant portion of South Florida's most popular and productive shallow-water reefs to all fishing, despite strong public opposition and the lack of scientific evidence. Fisheries and public waters are being closed at an alarming rate, and this has made the recreational fishing community increasingly sensitive to potential threats to our sport. Rather than providing an opportunity to expand and promote fishing access to our oceans, anglers cannot help but view the National Ocean Policy, particularly coastal and marine spatial planning, as another effort to place areas off limits to the public.

In contrast, the administration's other major resource conservation initiative, America's Great Outdoors, is increasing and improving recreational access, one of the primary goals. And our community has strongly embraced this initiative. The National Ocean Policy, however, has created considerable concern, primarily due to its treatment of recreational uses as one of many ocean sectors for which planning activities will occur. And the policy's vaguely defined ideas of protection and precaution open a pathway to closed areas of recreational fishing.

In several States that have undertaken coastal and marine spatial-planning process, including Massachusetts, Rhode Island, and Washington, existing authority of fisheries management agencies was recognized from the outset, and potential impacts on fishing were required to be minimized. This went a long way toward alleviating concerns that fishing activities would be unnecessarily restricted by spatial planning bodies which have little, if any, expertise in fisheries management.

To date, the recreational fishing community's concerns have largely gone unheard, despite numerous letters and discussions with administrative officials. It is our hope that the administration will assure that ocean planning will not result in more fishing closures, but follow the lead of States like Massachusetts, that elevated the status of recreational fishing. We do not want to see the administration follow the path California has taken.

Thank you for your time, and I am happy to answer any questions this committee may have.

[The prepared statement of Mr. Zurn follows:]

**Statement of Gary Zurn, Senior Vice President Marketing,
Big Rock Sports, LLC**

Good morning, Mr. Chairman. Thank you for this opportunity to speak before this subcommittee today. My name is Gary Zurn. I'm senior vice-president and part owner of Big Rock Sports, a wholesale distributor of fishing, marine, camping and shooting sports products. Our offices are located in Newport, NC along the Crystal Coast on the southernmost part of the outer banks. Along with my wife Ruth and son Graig we have lived there for the past 19 years, and have enjoyed our opportunities to fish recreationally, both offshore and inshore along the North Carolina coast.

My company, Big Rock Sports, has five distribution facilities across the United States, and 3 in Canada. Our U.S. locations include Hamlet, NC; Sauk Rapids, MN; Billings, MT; Clackamas, OR; and Fresno, CA. At Big Rock Sports our tagline is "Outfitting the North American Sportsman". We are international in the scope of our business, regional in our product assortments, and local in our business relationships. We currently service 15,000 outdoor sporting goods retailers, carry 110,000 unique products from over 1,200 manufacturers, and have a direct field sales force of 150 sales representatives across the US.

Along with my involvement at Big Rock Sports, I also serve on the board of the American Sportfishing Association. In addition to being on the board, I serve as Chairman of its Government Affairs Saltwater subcommittee, and also serve on its KeepAmericaFishing advocacy committee. I'm here today to not only represent my company and our 15,000 outdoor sporting goods retailers, but also the millions of recreational anglers across the nation who are facing increasingly complex and restrictive fishing regulations and unprecedented new threats to fishing access, particularly in our marine waters.

Recreational fishing generates a powerful economic engine that, in addition to providing employment for approximately one million Americans, provides the bulk of funding for aquatic resources management and conservation. In 2006—the last year that NOAA Fisheries generated national estimates of effort and participation—24.7 million saltwater anglers took nearly 100 million recreational fishing trips (97.7 million). Through fishing-related expenditures, including food, lodging, fuel, bait, tackle, gear, boats, houses and vehicles, saltwater recreational anglers generated \$92.2 billion in total sales.

In addition to expenditures on trip costs and fishing equipment, anglers contribute a considerable amount to direct fisheries management at the state level. Across all states, recreational anglers contribute \$621.5 million in license purchases and \$329.8 million across just the coastal states (2010 estimates). The vast majority of this money returns directly to management and enhancement of recreational fishing. In addition to license sales, through the excise taxes on fishing equipment and fuel purchases, recreational anglers contribute \$650 million to state fishery management through the Sport Fish Restoration Program, also known as Wallop-Breaux.

However, this traditional American pastime that provides the backbone for fisheries conservation and supports coastal economies across the nation is threatened like never before. As we strive to end overfishing and rebuild depleted fish stocks, all across the nation anglers are being required to change where and how they fish, and in many cases are facing fewer or diminished fishing opportunities. The implementation of new fisheries management approaches like marine protected areas, catch shares and annual catch limits has put anglers on guard like never before, and the Obama Administration's National Ocean Policy is yet another issue that anglers view as a potential threat to the future of fishing as we know it in this country. The rollout of the National Ocean Policy has created even greater uncertainty as anglers and recreational-fishing dependent businesses struggle to understand how recreational access will be treated in this complex policy. What the recreational fishing community sees in the National Ocean Policy is not improved science to drive better fisheries management or efforts to promote getting Americans out on the water; but rather more confusing bureaucracy and the serious potential that public waters will be placed off-limits based on poorly-defined ideas of protection and precaution.

The stated vision of the National Ocean Policy is "an America whose stewardship ensures that the ocean, our coasts, and the Great Lakes are healthy and resilient, safe and productive, and understood and treasured so as to promote the well-being, prosperity, and security of present and future generations." How could anyone be against that? As is often the case, however, the devil is in the details, and when the recreational fishing community looks into this policy we see the strong potential

that our community will not be adequately recognized in this process of planning where and how uses can take place in the ocean. What the federal government is contemplating with Coastal and Marine Spatial Planning (CMSP) is not a new concept, as several states have already embarked on similar processes. We would like to see this national process follow the lead of Massachusetts, which gave special recognition to fishing and essentially prohibited these activities from being further regulated under CMSP, and not California, which ignored the recreational fishing community and has closed many of the state's prime fishing areas.

The Painful Progress of Federal Fisheries Management

While our inland fisheries resources have been well managed by state fish and wildlife agencies for over a hundred years, saltwater fisheries management, particularly on the recreational side, is relatively new. As a result of decades of inattention despite increasing commercial and recreational fishing pressure, many marine fish stocks declined significantly during the 20th century, prompting serious reforms in our federal fisheries management law—the Magnuson-Stevens Fishery Conservation and Management Act (MSA)—in 1996 and 2006. New measures to end overfishing and rebuild overfished stocks have, in general, made significant strides. For example, according to NOAA Fisheries, the percentage of federally-managed stocks experiencing overfishing declined from 38 percent in 2000 to 20 percent in 2010.

These improvements have not come without considerable sacrifices made by recreational and commercial fishermen, however, and the law as written is far from perfect. Many provisions of the law, including the requirement to set annual catch limits on all stocks under federal management, are predicated on up-to-date and quality scientific data on fisheries. NOAA Fisheries presently has 528 stocks of fish or complexes of stocks under management, but only has updated stock assessment data on 121 of the 528. In addition, angler harvest data, which is the basis for many fisheries management decisions, has been collected by the Marine Recreational Fishing Statistics Survey, which the National Research Council concluded was incapable of being used for any purpose.

NOAA Fisheries has long operated under a system that moves slowly and has significant gaps in data collection, not to mention one that has paid little attention to the recreational sector. Good fisheries management can only take place with a solid foundation of science, and the 2006 reauthorization of MSA did not sufficiently acknowledge just how far behind NOAA Fisheries was, and still is, on collecting the data to lay this foundation. While every region of the country grapples with limited data to some extent, there is a significant disparity in how much data is collected across regions. For example, for the past few years, NOAA Fisheries has been conducting about 80 stock assessments per year in Alaska. At the same time, it has been assessing 15 stocks a year in the Gulf of Mexico, South Atlantic and Caribbean combined, and most of those assessments are for commercial shrimp stocks. For the sport fish that anglers pursue, NOAA Fisheries does about six assessments per year. The lack of stock assessment resources devoted to the southeastern U.S. has created major problems in the region, particularly recently as legal mandates that were predicated on adequate data collection must be met. Two recent decisions by NOAA Fisheries in the South Atlantic highlight the consequences of making management decisions based on poor data.

- After significant declines in the 1960s and 1970s, red snapper abundance in the South Atlantic has steadily increased over the last several decades, and most anglers will tell you that they are now seeing more and larger red snapper than ever before. However, a 2008 stock assessment of South Atlantic red snapper—the first in ten years—showed that the fishery was significantly overfished and undergoing overfishing, although anglers had been managed throughout this time under bag and size limits that were determined to be sufficient by NOAA Fisheries. The new stock assessment information not only triggered a closure of the red snapper fishery which is still in effect, but almost led to a ban on all bottom fishing in a 5,000 square mile area in the South Atlantic.
- Speckled hind and Warsaw grouper are two little known and rarely caught deepwater fish stocks in the snapper-grouper complex. Stock assessments have never been conducted on either stock, but recent catch data (the same data determined by the National Research Council as being fatally flawed) indicate that the average size and abundance of these species has declined. Because they are part of a larger deepwater snapper-grouper complex and are therefore susceptible to bycatch by recreational anglers targeting the complex, in 2010, NOAA Fisheries instituted a complete ban on all bottom fishing in depths deeper than 240 feet.

The overall lack of quality scientific data, combined with strict legal requirements to end overfishing and set catch limits on all stocks, has resulted in numerous management decisions that have taken anglers off the water, hurt businesses and degraded the public's trust of NOAA Fisheries. Anglers are willing to make sacrifices for the betterment of the resource, as long as they know decisions are based on sound scientific information. But many of the sacrifices being imposed on the recreational fishing community are instead based on guesswork, the precautionary principle and fear of lawsuits.

The two examples highlighted above are being reenacted across the country, and unfortunately many more are soon to come because of a legal requirement for NOAA Fisheries to place annual catch limits on all federally managed fish stocks by the end of 2011, regardless of the lack of quality biological and angler catch data. The "one size fits all" nature of this requirement undermines the discretion by the Regional Fishery Management Councils and is resulting in hundreds of new, arbitrary and precautionary limits being put in place. While the exact consequences remain unforeseen, anglers are expecting even more closures in the near future due to the guesswork and precaution that went into these decisions. This is not fisheries management; it's crisis management.

The Increasing Push for No-Fishing Zones

While the recreational fishing community has focused on improving the existing fisheries management framework, another fisheries management approach has steadily gained more attention over the last several decades. Rather than devoting resources to proven fisheries management techniques, like seasons, bag limits, size limits, etc., some groups are increasingly promoting area-based closures as a means to protect sensitive habitats, rebuild fish stocks, and a variety of other stated purposes. Commonly known as marine reserves or marine protected areas (MPAs), the concept of limiting or completely restricting fishing in certain areas of the ocean or freshwater bodies of water has been used effectively in some instances when supported by science and when all other management options have failed. However, MPAs are now often proposed as a catchall solution to any aquatic resource management issue, without regard for the negative economic and conservation impacts that such draconian restrictions will have.

Recreational fishermen view themselves as conservationists first and foremost, as evidenced by the millions of dollars they contribute to fisheries conservation and the countless hours volunteered towards fish stocking and fisheries habitat projects. Recreational fishing accounts for just 2 percent of all marine finfish harvest, compared to the 98 percent harvested by the commercial fishing industry. According to the NOAA Fisheries, over half of all fish caught by anglers are released alive. Most recreational fishing gear never comes in contact with any aquatic habitat, whereas commercial gears like trawls scour the bottom of the ocean. I say this not to put commercial fishermen in a bad light, but rather to highlight the relatively light environmental footprint that recreational fishermen have on the environment, while also contributing so much—both financially and through volunteer work on fisheries restoration projects—back into conserving the sport we love. This point is too often forgotten or ignored when policymakers and NGOs push for excluding *all* fishing activities in huge swaths of the ocean based on ideology rather than science. Anglers across the country are increasingly seeing more efforts to close public waters for reasons other than sound science.

California is close to finalizing a statewide effort that will place 15–20 percent of the state's coastal waters off limits to fishing through a process called the Marine Life Protection Act Initiative (MLPA). In areas of the state where closures have already been in effect, retailers have reported an average loss in sales of 20 percent, which they attribute to a loss of fishing access as a result of the MLPA closures. This early indicator will be followed by lost sales and jobs in the lodging and food industries that support recreational angler visits to California coastal areas. In the best of times, economic impacts and job losses such as these should never be forced on coastal communities by the State without absolute necessity. Today, in the worst economic climate since the Great Depression, such losses are entirely unacceptable, especially when the program for which they are sacrificed is both unnecessary and, quite possibly, actually destructive to the resources targeted for protection.

There are zero fish stocks in California's coastal waters that are currently undergoing overfishing. The conservation provisions of the state's Marine Life Management Act largely have been implemented, and California's marine fish stocks are rebuilding thanks to traditional fisheries management tools. Issues including ocean side development, invasive species, ocean acidification and terrestrial pollution represent far greater threats to the health of the ocean than recreational fishing ever

has, and none of these other threats can be addressed or solved by implementing a network of MPAs.

Perhaps at the root of the problem with the MLPA was the fact that the process was largely funded, through a public-private partnership, by private organizations that favor fishing closures. Under the MLPA process dictated by the agreement between the state and the funding organizations, statutory requirements have been ignored, environmental review has been flawed, and private meetings that should have been open to the public were held, during which important decisions were made. What Californians are left with is a vast, complicated network of closures that the state cannot afford to monitor and enforce, and which will only harm anglers and the businesses that depend on fishing while providing no benefits to the resource.

On the other side of the country, officials at Biscayne National Park are proposing to close some of south Florida's most popular and productive shallow water reefs to all fishing. Given its location adjacent to Miami and abundant recreational opportunities, Biscayne National Park receives roughly 10 million angler visits a year, supporting local businesses and providing a unique opportunity for the public to enjoy the outdoors so close to a major urban area. Marine reserves have been promoted by park officials for several years, despite opposition from numerous stakeholders, the Florida Fish and Wildlife Conservation Commission, and the park's own Fishery Management Plan working group. All of these groups recognize that there are management challenges facing the park, but excluding the public from accessing public resources is not the appropriate way to address these challenges. Ignoring the input from stakeholders and partners, the National Park Service seems intent on going forward with closing off over 10,000 acres of public waters to fishing despite the lack of scientific evidence to support the decision.

National Ocean Policy = More Fishing Closures?

Efforts such as in California and Biscayne National Park to prohibit the public from accessing public resources for reasons other than sound fisheries management directly conflict with the public trust doctrine in which our nation's natural resources are held and create further mistrust of the government. The proliferation of proposals to permanently close fishing areas to the public has made the recreational fishing community increasingly sensitive to potential threats to our sport. Rather than providing an opportunity to expand and promote fishing access to our oceans, anglers cannot help but view the National Ocean Policy—particularly CMSP—as another effort to place areas off-limits to the public based on the planning documents released to date.

An overarching concern of our community with the National Ocean Policy, particularly as it pertains to CMSP, is the treatment of recreational uses as one of numerous ocean “sectors” for which planning activities will occur, along with oil, gas, mining, commercial fishing, transportation and defense. We firmly believe that there is a distinct and inherent difference between recreational and industrial ocean uses, and their respective impact on the ocean environment. Members of the public who choose to spend leisure time on the water fishing with family and friends are fundamentally different than commercial activities in which a public resource is extracted for the purpose of selling that resource. Recreational use of our public waters is not only compatible with, but in fact is essential to, sound conservation and natural resource stewardship, as highlighted by contributions made to successful conservation programs such as the Sport Fish Restoration Program. Because recreational angling and boating contribute directly to funding the conservation of our nation's aquatic resources and provide other significant social and economic benefits, these activities warrant special and elevated consideration as a national priority as the National Ocean Policy moves forward.

It is worth noting that within this Administration's other major resource conservation initiative—America's Great Outdoors—increasing and improving recreational access is one of the primary goals. Because of its elevated support for outdoor recreation access and opportunities on public lands and waters, our community has strongly embraced and promoted the America's Great Outdoors initiative, whereas the National Ocean Policy, particularly as it pertains to CMSP, has created considerable concern.

While efforts have been made by the Obama Administration to alleviate some of these concerns, such as listing a national goal of CMSP to “provide for and maintain public access to the ocean, coasts, and Great Lakes,” other language in the recently released draft Implementation Plan and previous National Ocean Policy documents fuels the concern that areas of our nation's coastal and marine waters will ultimately be closed to recreational fishing under the CMSP process. For example, the National Objective 2 of CMSP, to “(r)educe cumulative impacts on environmentally

sensitive resources and habitats in ocean, coastal, and Great Lakes waters,” can be interpreted to mean identifying areas in which certain oceans uses, such as recreational fishing, will ultimately be restricted.

It is a long-standing policy of the federal government to allow sportsmen public access to public resources for recreational purposes consistent with sound conservation. This policy is reflected in the principles of our wildlife refuges, national forests and national parks. As such, the National Ocean Policy should recognize the unique contributions of the recreational fishing community to the economy and conservation and re-affirm President Clinton’s Executive Order on recreational fishing (#12962), as amended by President Bush via E.O. 13474 which requires that recreational fishing be managed as a sustainable activity in federal waters.

In several states that have undertaken coastal and marine spatial planning processes, the existing authority of fisheries management agencies was expressed from the outset. This went a long way towards alleviating concerns that fishing activities would be unnecessarily restricted by CMSP planning bodies which have little, if any, expertise in fisheries management. For example, the enabling legislation for the Massachusetts CMSP process, the Massachusetts Oceans Act of 2008, states:

“In the geographic area subject to the ocean management plan, as described in paragraph (b), commercial and recreational fishing shall be allowable uses, subject to the exclusive jurisdiction of the division of marine fisheries. Any component of a plan which regulates commercial or recreational fishing shall be developed, promulgated and enforced by the division of marine fisheries pursuant to its authority under chapter 130.”

The Massachusetts act also includes the following language further reinforcing the authority of the state marine fisheries agency:

“The director of marine fisheries, subject to the approval of the marine fisheries advisory commission, shall have sole authority for the opening and closing of areas within the geographic area described in subsection (b) for the taking of any and all types of fish.”

In Washington State, recent legislation to initiate a CMSP process, the Washington Marine Waters Planning and Management Law of 2010, includes similar language providing the state fish and wildlife agency with the sole authority to manage fishing activities as part of the CMSP process:

“If the director of the department of fish and wildlife determines that a fisheries management element is appropriate for inclusion in the marine management plan, this element may include the incorporation of existing management plans and procedures and standards for consideration in adopting and revising fisheries management plans in cooperation with the appropriate federal agencies and tribal governments.”

In the cases of Massachusetts, Washington and Rhode Island—which also undertook a CMSP process—recreational fishing and boating received priority consideration in the development of the plans. Importantly, these processes also required that potential impacts on recreational fishing and boating be taken into account and minimized while planning for other future or existing activities.

To date, the recreational fishing community’s concerns that CMSP will ultimately lead to unnecessary closes of marine waters have largely gone unheard, despite numerous letters and discussions with Administration officials. It is our hope the Obama Administration will review the enabling legislation for the state CMSP processes described above and incorporate similar language reserving management of recreational fishing under existing authorities into the Final Implementation Plan and all future CMSP guiding documents. In Massachusetts, Rhode Island and Washington, elevating the status of the recreational fishing and boating community in CMSP was critical to generating support from our community and ultimately leading to a successful outcome.

Thank you for your time, and I’m happy to answer any questions the committee may have.

Dr. FLEMING. Thank you, Mr. Zurn.
And next up we have Mr. Gibson.
Sir, you have five minutes.

**STATEMENT OF H. TERRY GIBSON, PRINCIPLE,
NORTH SWELL MEDIA, LLC**

Mr. GIBSON. Good morning, Chairman Fleming, Ranking Member Sablan, and members of the Subcommittee. Thank you for this

opportunity to testify today. My name is Terry Gibson, and I am a small business owner, entrepreneur, and third-generation Floridian. I am an avid diver, angler, and hunter. I own a charter fishing service in Jensen Beach. I also do work for the State of Florida promoting boating and fishing, and I am the co-owner and editor of a recreational fishing publication.

I grew up learning to love the outdoors from my parents and grandparents, and spent years hearing their stories of how the South Atlantic's coastal and ocean environment had changed over the preceding 100 years. Each time I go fishing, I don't just see the fisheries of today. I also remember the abundant fisheries of the past, and I envision their future.

The health of our ocean and coasts underpins the prosperity of many thousands of small businesses like my own that benefit in numerous ways from recreational fishing and responsible commercial fishing. But our current system for managing those valuable ocean resources is a labyrinth of jurisdictional boundaries that causes State and Federal agencies to work at cross purposes. Fragmented management regimes have consistently led to irrational management choices, unnecessarily destructive development, and frustrated stakeholders, like me.

Our Nation needs to reform ocean management and create a coordinated regional system that breaks down silos between different agencies. Our Nation needs the National Ocean Policy. The National Ocean Policy ensures that activity on or impacting our ocean is managed in a smart and coordinated way. It anticipates conflicts before they explode, and makes the best possible choice, balancing competing interests in an intelligent way.

Under our current system, laws designed to protect folks like me are not being faithfully executed. I have, along with friends and allies, spent inordinate sums of money and time on lawyers and experts to protect the places where I fish. As a fisherman and small business owner, I shouldn't have to go to court just to try and force the government to consider a project's impacts on my livelihood and quality of life. I should not have to hire lawyers, just to have my voice heard.

That is why the administration's National Ocean Policy is so important. It will finally place the management decisions closer to those who are impacted. It will finally create an integrated, multi-sector, regionally, based ocean management system, and a forum where all stakeholders can be heard. And, despite the claims of others on this panel here today, it will finally protect fishermen and small business owners like me.

Unfortunately, what you will hear from many of the more vocal voices on the fringe of the fishing community is fear, confusion, and an unwillingness to engage in a proactive process. In reality, the National Ocean Policy does not grant any agency additional powers to close fisheries, to create marine reserves, or any other type of protected area. What it does do is guarantee the fishing community will have a seat at the table for any ocean and coastal management decisions by other agencies or industries that might impact our way of life.

One of my biggest concerns is that other industries with more resources to devote to high-priced lobbyists and insider games will

squeeze fishermen out of productive areas and damage essential fish habitat. Such undesirable outcomes are far more likely to become realities under our current chaotic system than with the implementation of the National Ocean Policy. The challenge as industrial uses of the ocean expand is ensuring that the conservation gains we have achieved under the Magnuson-Stevens Act and the Fishery Management Council System are not further undermined by uncoordinated decision-making. Wind energy, wave energy, aquaculture, they are all coming. And we must have a plan to develop and site these industries responsibly.

The National Ocean Policy was the product of a long, thorough, bipartisan process that will continue to evolve, and needs input from all of us. But it must not become a political whipping boy for people who don't understand or choose to ignore the critical void it is seeking to fill. Fishermen have made sacrifices to achieve the progress we are seeing on the water. Science-based catch limits under the Magnuson-Stevens Act are working. We are already seeing our investment in sustainable fishing pay dividends. The list of species rebuilt and rebuilding continues to grow. And landings are increasing, as populations do.

Now we must turn to other major threats, habitat loss, declining water quality, acidification, and unplanned offshore energy development. National Ocean Policy gives fishermen, for the first time, the tools they need to make a difference in combating these threats. Fishery management councils will be given a seat on new regional planning bodies, so we can have our say.

Mr. Chairman, I want our kids and grandkids to grow up enjoying abundant ocean fisheries, just as my parents and grandparents did. With the National Ocean Policy taking shape, I have one more reason to be optimistic that they will.

Thank you for your time.

[The prepared statement of Mr. Gibson follows:]

Statement of Terry Gibson, Principle, North Swell Media, LLC

Chairman Fleming, Ranking Member Sablan and members of the subcommittee, thank you for the opportunity to testify before you today. My name is Terry Gibson and I am a small-business owner, entrepreneur, and a third-generation Floridian. Some of my earliest memories are of enjoying Florida's great outdoors, and I spent much of my youth hunting and fishing while living in Florida and Alaska. I remain an avid angler, diver and hunter, and I own a charter fishing service in Jensen Beach where I reside. I also spend time working as a contractor, including work for the state of Florida to promote boating and fishing. I am co-owner and editor of a new tablet-based recreational fishing publication, Fly & Light Tackle Angler.

I grew up learning to love the outdoors from my parents and grandparents, and spent years hearing their stories of how the South Atlantic's coastal and ocean environment had changed over the preceding 100 years. Each time I go fishing, I don't just see the fisheries of today; I also remember the abundant fisheries of the past—and envision their future.

Though I have published in the scientific literature and contributed to a number of reports on serious conservation issues affecting sportsmen, my primary professional background is in journalism for outdoor enthusiasts. I have served as the East Coast Editor of Surfer Magazine, Editor of Saltwater Fly Fishing magazine, as an editor at Florida Sportsman/Shallow Water Angler, and as the Fishing Editor of Outdoor Life. I have covered conservation issues in more than 20 countries and most coastal states. And I have done some combination of fishing, hunting, diving and surfing in at least 10 countries and 40 states, often as a paid professional.

In a time when most in the outdoor media industry see little reason for optimism, my business partner, Capt. Mike Conner and I see a landscape teeming with opportunities for those willing to embrace evolving media formats and do the hard work

to ensure that our natural resources are managed sustainably. The health of our ocean and coasts underpins the prosperity of many thousands of small coastal businesses that benefit in numerous ways from recreational fishing and responsible commercial fishing.

Need for Better Management

Growing up in South Florida, I have watched countless state and federal agencies work at cross-purposes. Fragmented management regimes have consistently led to irrational management choices, unnecessarily destructive development, and frustrated stakeholders. Time after time through the years, I have thought to myself, “There has to be a better way.” Indeed, there is a better way: The National Ocean Policy.

The National Ocean Policy (NOP) addresses problems that have been raised for years by experts in science and policy and people like me who have been hurt by the impacts of a tangled web of bureaucracy. The current system is a labyrinth of jurisdictional boundaries, where legal challenges are often the only tool to settle conflicts between user groups. Our nation needs to reform ocean management and create a coordinated, regional system that breaks down silos between different agencies. The NOP ensures that activity on or impacting our ocean is managed in a smart and coordinated way. It’s an effort to move beyond the failed system of the past and create a better future for fishermen and countless others who enjoy and rely upon the ocean. It’s an important step forward that our nation’s fishermen should embrace.

I speak from experience when I say that without a new management framework, which the National Ocean Policy has an opportunity to provide, fishermen are—and increasingly will be—at a severe disadvantage when it comes to head-to-head conflict with other interests and industries. I don’t want to perpetuate a system in which different stakeholders settle conflicts through costly and damaging legal and political battles. I want a system that anticipates those conflicts before they explode, and makes the best possible choice, balancing competing interests in an intelligent way.

I am a veteran of the kinds of conflicts inherent in the old system. Several times, together with friends and groups with shared interests in protecting Essential Fish Habitat, I have had to file lawsuits to try and stop development and construction projects from destroying the most productive places where we love to fish. For example, one of these suits prevented a massive dredge-and-fill project, advertised as “beach nourishment,” from destroying the beach at Florida’s Lake Worth Pier and surrounding beaches and reefs, where thousands of people go every week to fish, surf, dive and more. I had seen the consequences of these massive dredge-and-fill operations before: miles of shoreline of chronically filthy water, buried reefs, and fake mud beaches that the turtles and birds hate. That’s the kind of no-fishing zone I’m dead against—the type that renders valuable places unproductive and unattractive for wildlife and people.

Access is a null issue in places where fishing is no longer worthwhile. I could spend all week telling you about the countless honey holes I’ve seen destroyed since my childhood—because government agencies worked against each other, treating fish, fishermen and fish habitat as little more than an afterthought. As a fisherman and small-business owner, I shouldn’t have to go to court just to try and force the government to consider a project’s impacts on my livelihood and quality of life. I should not have to hire lawyers just to have my voice heard.

That is why the administration’s National Ocean Policy—in large part an effort to implement key recommendations of the bipartisan, Bush-appointed U.S. Commission on Ocean Policy—is so important. It will finally place the management decisions closer to those who are impacted. It will finally create an integrated, multi-sector, regionally based ocean management system and a forum where all stakeholders can be heard. And despite the claims of others on this panel here today, it will finally protect fishermen and small-business owners like me.

National Ocean Policy

Unfortunately what you will hear from many of the more vocal voices on the fringe of the fishing community is fear, confusion and an unwillingness to engage in a proactive process.

In reality, the NOP does not grant any agency additional powers to close fisheries, or to create marine reserves or any other type of protected area. When more than one-third of federal waters in the Gulf of Mexico were closed to fishing, it was not because of the NOP. The closure occurred because of a conflict between two key ocean uses in the Gulf: offshore oil drilling and fishing. It occurred because of an

absence of agency oversight—and because of an inadequate initial response due to the lack of coordinated planning between state and federal agencies.

The NOP gives fishermen an equal, if not greater, voice alongside other ocean industries and users. In its absence, what are we to expect? Take, as just one example, the administration's "Smart from the Start" initiative, unveiled by Interior Secretary Ken Salazar in November 2010. The initiative seeks to speed offshore wind energy development off the Atlantic Coast. How can we ensure that alternative energy projects are sited, and sited in a way that doesn't negatively impact fishing opportunities from Maine to Florida? I ask my friends who love to fish: do you want to have to fight for your voice to be heard for each and every new initiative like this one, or do you want to have a single forum for all ocean issues where you are guaranteed a seat at the table?

Regional planning bodies (RPB) under the NOP are a venue that can give fishermen a voice. Fishery Management Councils, as representatives of the fishing industry, will be given a seat on these bodies under the administration's proposals. I am optimistic that the process will help new stakeholders find places to operate profitably and sustainably in U.S. waters without displacing traditional commercial and recreational uses. Wind energy, wave energy, aquaculture—they are all coming. And we must have a plan to develop and site these industries responsibly. If we don't, chaos will ensue and fishermen will lose out.

Real Threats to Fishing

I hope that the NOP and the RPBs it creates will work aggressively toward addressing the biggest threat to fishing—loss of functional access to productive waters due to pollution and habitat degradation. One of my biggest concerns is that other industries, with more resources to devote to high-priced lobbyists and insider games, will squeeze fishermen out of productive areas and damage essential habitats—as it has pained me to watch so many times. Such undesirable outcomes are far more likely to become realities under our current chaotic system than with the implementation of the NOP. The challenge as industrial uses of the ocean expand—and expand they will—is ensuring that conservation gains achieved under the Magnuson-Stevens Act (MSA) and the Fishery Management Council system are not further undermined by uncoordinated decision-making by other federal agencies.

As fishermen we fought hard to ensure that we were given a seat at the table and a vote on the RPBs and we have been heard. The RPBs will give us a place besides the courtrooms to stick up for ourselves, to learn more about the challenges of implementing new offshore development such as wind energy, and to work collaboratively with these new stakeholders to ensure that ocean uses are safely maximized for the nation's benefit.

Conclusion

The National Ocean Policy was the product of a long, thorough, bi-partisan process. It will continue to evolve and needs the input of us all; but it must not become a political whipping boy for people who don't understand—or choose to ignore—the critical void it is seeking to fill. The National Ocean Policy, the important coordinating structures it establishes, and critical tools like Marine Spatial Planning, are too important for our fishing future to reflexively vilify. Many fishermen like me see these tools as essential if our long-term fishing opportunities are to be sustained.

Fishermen have made sacrifices to achieve the progress we are seeing on the water. The NOP works to ensure that the progress towards sustainable fisheries achieved through implementation of science-based catch limits is not undermined by an activity that the fishery management councils have no control over. The National Ocean Policy creates the appropriate regional forums and processes for conservation benefits to be guaranteed.

As American fishermen, we are proud of the great strides we've made toward ending and preventing overfishing. MSA is clearly working—the list of species rebuilt or rebuilding continues to grow, and landings will increase as the populations do. Now we must work within the regional planning body process to ensure that we stem the tide of empty hooks because of other major fisheries problems, including habitat loss, declining water quality and unplanned offshore energy development. Fishermen around the country stand ready once again to roll up their sleeves and engage in the difficult work necessary to ensure our kids will be able to enjoy abundant fisheries. In so doing, we look forward to striving for harmony with ocean neighbors old and new through the National Ocean Council process.

Dr. FLEMING. I thank you, Mr. Gibson.
Next, Mr. Mannina.

You have five minutes, sir.

**STATEMENT OF GEORGE J. MANNINA, JR.,
PARTNER, NOSSAMAN, LLC**

Mr. MANNINA. Thank you, Mr. Chairman. It is a privilege to be here today before you with this Subcommittee, for whom I served as a counsel for many, many years. But, unlike my colleagues on this panel, I am not going to talk about whether the National Ocean Policy is a good or a bad idea. That is for you gentlemen to decide. What I am going to suggest to you is that it violates the Separation of Powers clause of the U.S. Constitution.

Allow me to begin by defining what the National Ocean Policy does. There are 23 agencies that will develop ocean conservation plans that focus, among other things, on ecosystem management and marine spatial plans. Executive Order 13547 directs Federal agencies and departments to implement each and every existing statute, so as to ensure there is no adverse impact to the oceans. Assuring no adverse impact is accomplished by implementing the National Ocean Policy.

Now, consider for a moment, in your position as legislators, the range of activities likely to be affected by the National Ocean Policy. Among those activities include: highway construction and operation, because highway runoff flows into waters which flow into the oceans; industrial discharges into navigable waters; municipal wastewater discharges into navigable waters; air emissions—think ocean warming and ocean acidification; agriculture—think fertilizer and pesticide runoff; OCS leasing.

And finally, consider a statute with which this Subcommittee works regularly, the Magnuson-Stevens Act, and consider these two examples. Assume for a moment that a Regional Fishery Management Council approves a fishery management plan that opens an area to commercial or recreational fishing. Assume that the National Ocean Policy, through its marine spatial planning, closes that area. Who wins? The answer is the National Ocean Policy. And the FMP, the fishery management plan, is disapproved.

Consider another example. I am currently involved in some litigation in which the plaintiff is arguing that harvest levels should be reduced, and more fish set aside for forage for ecosystem management. If the result of the National Ocean Policy is the direction that some percentage of forage fish be set aside for ecosystem management, it will directly affect harvest levels by directing the contents of FMPs.

And finally, consider that the Magnuson-Stevens Act established fishery management councils to develop the contents of FMPs. That statutory process could be displaced by the National Ocean Policy.

The reality is that the Executive Order and the National Ocean Policy will create new legal requirements applicable to the Magnuson-Stevens Act and to all public laws. The question is: What is the legal authority for that?

The Constitution vests the authority to legislate with Congress. Because the Executive Order is legislative in effect, the Constitution provides no basis for the Executive Order. That said, the Executive Branch can properly issue rules interpreting and imple-

menting legislation. However, that authority is not applicable here for at least three reasons.

First, the power of the Executive Branch to issue rules implementing a statute comes from a congressional delegation of authority. Here there is no delegation of authority. Here there is no statute authorizing the Executive Branch to create a new oceans policy and to superimpose that on all other public laws.

Second, when Congress delegates legislative authority to the Executive Branch to promulgate rules, it does so pursuant to the Administrative Procedure Act, which allows such rules to be subject to judicial challenge. Here, the Executive Order states there is no judicial review. For example, if a marine spatial plan closes an area to fishing, there is no judicial review.

And third, the National Ocean Policy is not an interpretation of individual statutes, but is, in effect, the enactment of a new super-statute. You may search the Magnuson-Stevens Act in vain for authorization to establish an ocean zoning program for fisheries. This is not the implementation of a statute; this is the enactment of a new statute.

And for those reasons, I believe that implementation of the National Ocean Policy will likely result in court decisions, perhaps in the Supreme Court, regarding the constitutionality of the Executive Order and the National Ocean Policy.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Mannina follows:]

Statement of George J. Mannina, Jr.

Mr. Chairman and distinguished members of this Subcommittee, I am pleased to be here today. I was privileged to serve as Counsel to this Subcommittee for eight years prior to becoming the Chief Counsel and Staff Director for the Republican members of the House Merchant Marine and Fisheries Committee before it was merged into the Committee on Natural Resources. During my years with the Subcommittee and Committee, and since that time, I have worked on numerous ocean policy issues. I am testifying today in my individual capacity and not on behalf of any client or of my firm, Nossaman LLP, although one of our associates, Audrey Huang, has worked with me on this testimony.

Executive Order 13547 and the Final Recommendations of the Interagency Ocean Policy Task Force

The Final Recommendations of the Interagency Ocean Policy Task Force dated July 19, 2010 ("Task Force Report") establish a National Ocean Council of at least 23 members. Task Force Report at 20. The National Ocean Council is awarded the overall responsibility for developing a national ocean conservation program, including specific action plans. *Id.* at 20–21. The priority ocean conservation objectives include: (1) ecosystem protection and restoration, (2) enhancing ocean water quality by implementing sustainable practices on land, and (3) coastal and marine spatial plans. *Id.* at 6, 28.

The Task Force Report provides that National Ocean Council members, which include the Secretary of the Interior, the Secretary of Commerce, and the Administrator of the Environmental Protection Agency, will "adhere" to the conservation plan developed by the National Ocean Council, including the coastal and marine spatial plans. *Id.* at 29–31, 65, 77. The Task Force Report then establishes a mechanism to "ensure execution" of the National Ocean Plan developed by the National Ocean Council and to "ensure implementation" of the coastal and marine spatial plans. *Id.* at 21.

Executive Order 13547, signed by President Obama on July 19, 2010 "adopts the recommendations of the Interagency Ocean Policy Task Force ... and directs executive agencies to implement those recommendations" Executive Order 13547 at § 1. The Executive Order states its purpose is to "ensure" that federal agencies implement the National Ocean Plan "to the extent consistent with applicable law." *Id.* at § 5(b). Lest there be any doubt, the Executive Order directs that all federal de-

partments and agencies “shall, to the fullest extent consistent with applicable law” implement the National Ocean Plan. *Id.* at §6(a).

The Impact of the National Ocean Plan on Existing Laws

Assume an ocean resource management plan is properly developed pursuant to an existing Public Law. Assume further that the plan is presented to an agency decisionmaker for final approval. If the ocean resource management plan conflicts with the National Ocean Policy and Plan, is the agency decisionmaker required to disapprove the duly prepared resource management plan?

Consider, for example, the Magnuson-Stevens Fishery Conservation and Management Act (“Magnuson-Stevens Act”), 16 U.S.C. §1801, *et seq.*, which establishes eight Regional Fishery Management Councils (“Councils”) charged with the responsibility of developing fishery management plans (“FMPs”) in their areas of geographic responsibility. The process by which a Council develops an FMP is one full of analyses by expert Council and agency staff. There are multiple opportunities for public testimony and input. The process can consume years. The Magnuson-Stevens Act provides that after this process is complete and an FMP is approved by a Council, the FMP must be reviewed by the Secretary of Commerce. The Secretary of Commerce must approve the FMP if it is consistent with ten National Standards set forth in the Magnuson-Stevens Act and with applicable law. 16 U.S.C. §1854.

Let us assume for a moment that a Council has completed its FMP development process and the resulting FMP allows commercial and/or recreational fishing in a specific ocean area. Let us also assume the National Ocean Plan has been completed and it closes the same area to all fishing. The question is what does the Secretary do when reviewing the Council-approved FMP.

I asked that precise question of representatives of the Council on Environmental Quality. In fact, I asked the question three times. The first two were greeted with variations of the response that developing the National Ocean Plan will be a multi-year process with full public input. My third attempt to secure an answer stipulated there had been a full public process and the final ocean plan closed the area to commercial and recreational fishing. In that fact pattern, would the National Ocean Plan trump the Council’s decision and require the Secretary of Commerce to disapprove the FMP? The final answer was yes. The National Ocean Plan would require the Secretary to disapprove the Council approved FMP because the FMP was inconsistent with the National Ocean Plan developed by the National Ocean Council.

Allow me to use another example. I am currently involved in a lawsuit defending a fishery management plan amendment against allegations that the Secretary of Commerce, acting through the National Marine Fisheries Service (“NMFS”), approved harvest levels that failed to leave an adequate amount of forage fish in the ocean. The Plaintiff cites with approval studies that, according to the Plaintiff, argue for the position that “fishery managers set catch limits that leave most, if not all, of the forage species’ virgin biomass (the level of biomass that would exist without any fishing) in the ecosystem to ... maintain ecosystem health.” A virgin biomass equates to no fishing, particularly when virtually every species is forage to another species.

Assume arguendo that the final National Ocean Plan requires a fixed percentage of forage fish to be set aside for purposes of proper ecosystem management given that ecosystem management is one of the priority objectives of the National Ocean Plan. According to Executive Order 13547 and the Task Force Report, the National Ocean Plan would then govern how the Secretary of Commerce and NMFS exercise discretion in determining if a Council approved FMP meets the requirements of the Magnuson-Stevens Act. In short, the National Ocean Plan could regulate harvest levels by directing how the Secretary of Commerce and NMFS are to implement their approval authority under the Magnuson-Stevens Act. In fact, it would appear that under this interpretation of the Executive Order, the Order would be considered the equivalent of other applicable law with which FMPs must be consistent.

In both examples above, it does not matter if the National Ocean Plan is viewed as a required interpretation of the Magnuson-Stevens Act National Standards or as applicable law with which the Council approved FMP must be consistent. The result is the same. The National Ocean Plan, once fully implemented, effectively amends the Magnuson-Stevens Act by establishing new standards that govern what is or is not acceptable in an FMP.

There is another aspect of this issue that is equally important. Congress, through the Magnuson-Stevens Act, created a process by which FMPs are developed and fishery conservation and management decisions are made. That process is through the Regional Fishery Management Councils and the legislative history of the Magnuson-Stevens Act is clear that the Councils have primary authority. The net effect

of the National Ocean Plan could well be to amend or repeal that statutory Council-driven process, replacing it with the National Ocean Policy process and requirements.

The legal issue associated with all of these examples is that the Constitution vests the power to enact and to amend laws with the Congress. Advocates of the National Ocean Policy, no matter how well meaning, cannot by Executive Order or policy statement amend a Public Law to create new statutory standards. That is a power reserved to the Congress by Article 1, § 1 of the U.S. Constitution which provides: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

The Executive Order and The National Ocean Policy Report Present a Serious Constitutional Issue

As one legal scholar noted: "An Executive Order is a Presidential directive that the government and/or private parties act in a prescribed way. Although such orders come cloaked with the prestige and aura of that high office, unless some constitutional or statutory authority supports the directive, it has no legal effect." Morton Rosenberg, *Presidential Control of Agency Rulemaking: An Analysis Of Constitutional Issues That May Be Raised By Executive Order 12,291*, 23 *Ariz. Law Review* 1199 (1981), at 1205, citing *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952). In that case, the Supreme Court also stated:

In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952).

In a subsequent case, the Supreme Court returned to the separation of powers issue stating:

[I]t remains a basic principle of our constitutional scheme that one branch of the Government may not intrude upon the central prerogatives of another. [Citations omitted.] ... [T]he separation-of-powers doctrine requires that a branch not impair another in the performance of its duties.... Article I's precise rules of representation ... make Congress the branch most capable of responsible and deliberative lawmaking. [Citations omitted.] Ill suited to that task [is] the Presidency, designed for the prompt and faithful execution of the laws and its own legitimate powers....

Loving v. United States, 517 U.S. 748, 575–58 (1996).

Executive Order 13547 begins by stating "By the authority vested in me as President by the Constitution ... of the United States of America, it is hereby ordered...." Executive Order 13547. As noted above, the Constitution does not vest the legislative power with the Executive Branch. The authority for the Executive Branch to effectively amend the Public Laws of the United States cannot be found in the Constitution. The Constitution does not provide the necessary legal authority for the Executive Order or the National Ocean Policy and Plan.

That said, it is unquestionably correct that the Executive Branch has the power to implement and, in doing so, to interpret, statutes. However, the source of that interpretive authority, the authority to issue regulations implementing statutes, is found in the Congressional delegation of its legislative authority. Executive Order 13547 cites the laws of the United States as the second basis for its legal standing. The Executive Order states: "By the power vested in me as President by ... the laws of the United States of America, it is hereby ordered" *Id.* However, this legal theory provides no more support for Executive Order 13547 than the U.S. Constitution for at least three reasons.

First, the authority given to the National Ocean Council by the Executive Order to create and to then implement an ocean policy with which every Public Law must be consistent is not found in any Congressionally passed statute.

Second, when legislative authority is delegated to the Executive Branch by the Congress, it is often done with language providing for judicial review of agency decisions. Where such review is not explicitly provided, it is imputed pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 702, 704, and 706 ("APA"). Pursuant to the APA, agency rulemaking can be challenged as inconsistent with a duly enacted statute. However, Executive Order 13547 states that actions taken pursuant to the Executive Order, actions taken to implement the National Ocean Policy, are not subject to judicial review. Executive Order 13547 at § 9(d). In other words, disapproval by the Secretary of Commerce of a Council-prepared FMP because of its inconsistency with the National Ocean Policy is claimed to be beyond judicial review. This, in fact, violates the laws of the United States embodied in the APA.

Third, the National Ocean Policy is not an interpretation of the provisions of existing statutes. It is, in fact, the creation of a new law and regulatory regime. I recognize Executive Order 13547 states the National Ocean Policy is to be implemented “to the extent consistent with applicable law.” *Id.* at §5(b). However, this so-called “savings clause” does not save the Executive Order. The reason, as already noted, is that the National Ocean Policy will create a new legal requirement with which all existing Public Laws must conform. It is not the interpretation of existing authority. It is the *de facto* enactment of a new Public Law.

I have already discussed how the National Ocean Policy can operate to replace the Council based FMP development process established in the Magnuson-Stevens Act. However, the Magnuson-Stevens Act is not the only statute that may be impacted. A few examples suggest the breadth of the National Ocean Policy. The Outer Continental Shelf Lands Act (“OCSLA”) authorizes the Secretary of the Interior to lease outer continental shelf submerged lands for oil and gas development. 43 U.S.C. §§1337 and 1344. Pursuant to that law, the Secretary of the Interior identifies areas that are to be leased. Because submerged lands would be subject to the coastal and marine spatial plans developed under the National Ocean Policy, these spatial plans will govern and control the areas available for leasing. Congress has by statute established standards and a process by which areas subject to leasing shall be identified. Congress did not establish as a standard that such leases are to be specified in accordance with the National Ocean Policy and its coastal and marine spatial plans. The practical effect of the National Ocean Policy is to amend the OCSLA by grafting onto it a new standard with which the Secretary of the Interior is to comply.

As the members of this Subcommittee know, in the recent past, Congress grappled with the issue of clean air legislation. Those discussions did not result in the passage of new legislation. However, under the rubric of preventing or otherwise regulating ocean warming and/or ocean acidification, the National Ocean Policy could set standards and policies that bind federal agencies to promulgate new air emission standards or requirements that are asserted to be beyond judicial review pursuant to the Executive Order.

Similarly, persons who apply for discharge permits or dredge and fill permits under Sections 402 and 404 of the Clean Water Act could find themselves subject to a new set of standards contained in the National Ocean Policy. Section 404, for example, provides that permits are issued only after a finding that permit issuance will not have an unacceptable adverse impact on navigable waters. 33 U.S.C. §1344(c). The National Ocean Policy could define what constitutes such an impact given that navigable waters ultimately flow into the oceans. Similarly, section 402 discharge permits cannot be issued if they adversely affect the quality of navigable waters. 33 U.S.C. §1342(a). Again, the National Ocean Policy is, in practical effect, a statutory overlay controlling the definition of an adverse effect.

Within the next few weeks, the House of Representatives will be considering a surface transportation bill. Although there is disagreement about what should be in that legislation, Members on both sides of the aisle agree that transportation infrastructure is important and maintaining that infrastructure will create jobs. Since highways generate runoff that often flows into navigable waters that flow to oceans, it would not be unexpected that the new National Ocean Policy could create the equivalent of new statutory standards with which all surface transportation projects must be consistent.

Advocates of the National Ocean Policy will assert that the Executive Branch could promulgate regulations under its existing delegated authority to do some or all of these things. That may or may not be the case, but Executive Order 13547 does not take that approach. Instead, it creates, via the National Ocean Policy, a new set of requirements with which existing statutes are to be consistent, and then places these new standards beyond judicial review. This effectively constitutes the enactment of new legislation that violates the separation of powers set forth in the U.S. Constitution.

Moreover, when Congress has delegated legislative authority, it has done so to specific departments and agencies. Executive Order 13547, and its National Ocean Policy, effectively amend each of these statutes by changing the Congressional delegation of authority from an individual department or agency to a collective of at least 23 departments and agencies.

Conclusion

Mr. Chairman, the National Ocean Policy put forward by the Administration will inevitably lead to constitutional challenges that may require the attention of the Supreme Court. I am not saying the National Ocean Policy is a good or a bad idea. That is for you to decide. What I am saying is that there are very serious questions

about whether the Administration can do it without your passing legislation giving them the authority. Without such legislation, it is quite possible that Executive Order 13547 and its National Ocean Policy will be found to violate the separation of powers set forth in the U.S. Constitution.

Dr. FLEMING. Thank you, Mr. Mannina.
And next up, Mr. LeBlanc.

**STATEMENT OF JUSTIN LeBLANC,
FEDERAL REPRESENTATIVE, UNITED CATCHER BOATS**

Mr. LeBLANC. Thank you. Thank you all for the opportunity to testify this morning regarding the administration's efforts to establish a new ocean zoning regulatory scheme in the absence of either congressional authorization or congressional appropriation.

United Catcher Boats is a trade association of approximately 70 vessels that participate in some of the largest, most valuable, and best-managed fisheries in the United States, including North Pacific pollock, Alaska crab, and Pacific whiting. Joining UCB today are nearly a dozen other commercial fishing organizations. Together, these organizations represent approximately \$2 billion in annual value to the U.S. economy, and tens of thousands of jobs.

We have been involved in the debate and discussion concerning National Ocean Policy since the very beginning, when the two competing national ocean commissions were established. Throughout the process, our concerns have been repeatedly expressed and repeatedly ignored. Our fundamental concern is that we have a robust, stakeholder-driven, science-based public process for the management of U.S. fisheries that should not be overwritten by some new Federal bureaucracy that sucks money away from activities and spends it on process.

The regional planning bodies proposed by the NOP are comprised entirely of Federal, State, and Tribal officials, with no role for any of the varied ocean users. Proponents argue that the RPBs are simply regional planning and coordination bodies, with no regulatory authority. They are almost correct when they claim that RPBs are not regulatory. Because they are, in fact, supra-regulatory. There are numerous examples in my written testimony of where the NOP will have regulatory impacts. One of the most significant is on page 65 of the Interagency Ocean Policy Task Force's final recommendations.

And I will paraphrase some of this; it is a lengthy paragraph: "Agencies would incorporate components of the Coastal Marine Spacial Plan into their respective regulation to the extent possible. Adherence with Coastal Marine Spacial Plans would be achieved through Federal and State agencies and Tribal authorities. CMS plan signatories would review processes and, where legal constraints are identified, would seek to remedy those constraints, by working with the National Ocean Council to evaluate whether a legislative solution or changes to regulations are necessary or appropriate."

Some have argued that placing a representative of the Regional Fishery Management Councils on the relevant RPBs would address our concern for input into the process. But the administration is insisting that such a council representative only be a Federal, State,

or Tribal government official. Under the NOP implementation plan, this simply sounds like a convenient person for the regional planning bodies to give their marching orders to. No thank you.

One of the most fascinating aspects of the NOP implementation plan is its failure to address who wins the inevitable user conflicts that will arise under the new ocean zoning plans. It is given that under such an ocean zoning plan, non-compatible users will want access to the same piece of ocean. A wave energy company may want to place its array in the middle of prime fishing grounds, for example. Nothing in the NOP clarifies who wins this conflict, and by what metric.

Is it historical use of the area? The number of jobs that that industry creates? The ecosystem or habitat impacts that that activity has? The value to the economy, national security? None of these metrics are identified in the NOP, as to who would win those inevitable conflicts. When questioned during public sessions, the administration has stated that science would decide those questions. But this isn't a scientific question. It is a social, economic, and even a cultural one.

Some have argued that our concerns about National Ocean Policy are overblown, as several states are already implementing CMSP within their waters. I am not familiar with all of these efforts, but do know some about the Washington State effort.

First and foremost, Washington State's plan is not underway, because in statute, implementation is subject to the availability of Federal grants or private donations.

Second, the Washington State law recognizes existing uses, and notes the substantial economic benefits of such uses, including commercial fishing. It also protects and encourages working waterfronts, and requires that any management plan that has a negative impact on commercial or recreational fishing minimize that impact. If the NOP read like the Washington State law, I am sure the administration would face far less opposition to its efforts.

Finally, how is all of this being paid for? The President's budget contains no line item for National Ocean Policy implementation. When asked how NOAA Fisheries would pay for its NOP activities, fisheries head Sam Rauch indicated that it would be supported from within existing budget lines and appropriations. So a National Ocean Policy that calls for improved science and management will take money away from these very activities in order to support a new layer of bureaucratic processes whereby government officials alone decide how to zone our oceans.

Given that the NOP has no congressional authorization, no direct congressional appropriations, no stakeholder input, and will impose a massive new ocean-zoning scheme, we recommend that Congress bar any Federal funds from supporting this effort. Thank you.

[The prepared statement of Mr. LeBlanc follows:]

Statement of Justin LeBlanc, Federal Representative, United Catcher Boats, on behalf of United Catcher Boats & Alaska Bering Sea Crabbers; Alaska Crab Coalition; Alaska Groundfish Databank; At-Sea Processors Association; Crab Group of Independent Harvesters; Pacific Seafood Processors Association; Petersburg Vessel Owners Association; Southeast Alaska Fishermen's Alliance; United Fishermen of Alaska; and West Coast Seafood Processors Association

INTRODUCTION

Chairman Fleming, Ranking Member Sablan, and Members of the Subcommittee; thank you for the opportunity to testify today regarding the implications of the Administration's new National Ocean Policy Implementation Plan on commercial fishermen and fisheries. My name is Justin LeBlanc. I am the federal government relations representative for United Catcher Boats (UCB).

UCB is a trade association of 70 commercial fishing vessels that participate in the Alaskan pollock, Alaskan crab, and West Coast groundfish fisheries. Our vessels are called catcher boats because that is all we do—we catch fish and deliver our catch “in the round” to processing facilities. We do not process the fish, even minimally.

Joining UCB in presenting these comments to the Subcommittee are. . .

Together, these commercial fishing and processing organizations represent numerous companies which participate in the federally managed fisheries in the Exclusive Economic Zone off Alaska, Washington, Oregon and California, along with businesses that rely on these companies. These fisheries comprise over 55% of the annual commercial seafood harvest of the United States. The yearly direct value is over two billion dollars, with hundreds of millions of dollars of secondary economic effects resulting from our expenditures in other sectors such as shipyards, marine equipment, seafood packaging, insurance and finance, and transportation providers.

In addition, on November 7, 2011, the Seafood Coalition submitted a letter to the Full House Resources Committee (and attached to this testimony) expressing the need for Congressional action barring the Administration from continuing to divert appropriations from authorized programs to implement an ill-conceived NOP that is not authorized by Congress and that threatens fishing industry jobs.

The Seafood Coalition is a broad national coalition that includes commercial fishing interests, seafood processors, and coastal communities. This broad-based group, which includes members from every region of the U.S., accounts for about 85 percent of the seafood landed annually in the U.S. The Seafood Coalition believes the Administration has turned a deaf ear to the seafood industry's concerns in implementing NOP, choosing instead to push ahead with a new “top down” bureaucracy empowered to develop plans and to restrict ocean uses through regulations issued under an array of oceans-related statutes.

The commercial fishing industry has been involved in this issue for well over a decade since the ocean policy commissions began preparing their reports. We have offered our views each step of the way since then. When the recommendations of the oceans commissions were put into legislative form by various environmental groups (H.R. 4900/108th Congress, H.R. 2939/109th Congress, H.R. 21 in the 110th and 111th Congresses) we provided comments and testimony along with many other ocean user groups. After Congress repeatedly refused to enact this legislation, the approach of the environmental community changed and H.R. 21 reappeared in the form of the Administration's National Ocean Policy (NOP). The NOP was given life through the President's proclamation of Executive Order 13547 on July 19, 2010. We now are being offered another opportunity to provide comments on the NOP Implementation Plan, the Administration's effort to impose a new regulatory program for the oceans and Great Lakes.

Although we are again submitting comments, we are disappointed that despite the importance of our industry to the nation's economy, and despite our familiarity with ocean ecosystems, our comments at each step in this process have been ignored. We continue to present what we think is an obvious case: the NOP's Coastal Marine Spatial Planning/Regional Planning Body structure is an unauthorized new regulatory program aimed at imposing a new ocean governance structure which conflicts with successful Congressionally authorized programs such as regional fishery management. Nevertheless, we remain committed to participating in the process and we hope that the Administration will eventually make this as transparent and collaborative a process as has been claimed all along.

THE IMPLEMENTATION PLAN

The Draft Implementation plan proclaims four overarching themes. We will briefly address each.

Adopt Ecosystem-Based Management

This has been a goal of resource managers for many years. It is a goal that we support. But, as any oceanographer will tell you, it is also a goal that cannot be fully achieved without vast amounts of additional scientific data that will take decades to collect and interpret, even assuming that funding is available. In the meantime, resource managers must use the best available data to manage our ocean resources. Progress has definitely been made in moving from single species management to using ecosystem principles. In fact, the fishery management process used by the North Pacific Fishery Management Council incorporates consideration of ecosystem effects for almost all decisions they make and the Pacific Fishery Management Council is well along on adopting a similar process. Nevertheless, we are a long way from being able to claim that we understand any ecosystem well enough to be able to simultaneously manage all the species which interact within a given region. This is especially true given that current law requires specific actions—rebuilding overfished stocks, protecting endangered or threatened species, protecting marine mammals—which elevate certain species to a higher plane than others within an ecosystem.

Obtain, Advance, Use, and Share the Best Science and Data

As we just pointed out, everyone supports collecting and using the best possible science. But doing so requires large amounts of money and time. We hope that the federal budget will soon allow a greater allocation of funds toward this goal. But, in the meantime, scientists and resource managers will have to do the best job they can with the data that is available. To the extent that funding is not available to provide precise, accurate and current data which allows the best management of ocean resources, we need to be careful not to set goals which are technically unobtainable.

Promote Efficiency and Collaboration

Once again, we are all in favor of greater cooperation and coordination among the agencies which regulate ocean activities. Interestingly, when discussing this theme the document states, “This draft Implementation Plan creates no new regulations, however, within existing authorities, legal and regulatory barriers to full implementation of the National Ocean Policy will be identified and permitting processes will be streamlined.” This statement is as close as we have seen to an admission that there is no specific statutory authority for this program. It also suggests that the Administration intends to impose new regulations where necessary in order to eliminate the “regulatory barriers” they identify, and to seek new legislation that would provide the statutory authority. Strengthen Regional Efforts

The final theme is to strengthen regional, state and local ecosystem conservation efforts. We doubt anyone would be opposed to this goal, and as long as the resources are available it is something we would support. At the same time, we suggest that since federal funds are scarce, the Administration should focus on supporting existing organizations with a record of success, such as the regional fishery management councils and the federal scientists on whom they rely.

Fiscal Responsibility

There is a discussion of Fiscal Responsibility on page 5 of the document. It says that the National Ocean Council will issue an annual memorandum on how federal resources should be allocated. We think it would be more useful if a detailed NOP implementation budget were developed and presented to Congress. Given federal budget constraints, it is almost certain that Congress will continue to refuse funding for the NOP initiative unless such a budget plan is offered. Providing a budget proposal that is subject to public scrutiny and debate will also increase transparency of the process. The document itself even admits that carrying out the Implementation Plan is, “contingent on the availability of funds”. This is one of the reasons we have argued since the beginning of this process that if NOP is to be pursued it should involve small steps and pilot projects. We fear that if various agencies attempt to implement this massive program within their current budgets, large amounts of money will be diverted from ongoing, Congressionally mandated programs. An example of the threat posed by such a diversion of funds is the possibility that certain fishery stock assessment surveys done in the North Pacific could switch from being done annually to being done bi-annually. Lowering the quality of the data available to fishery managers would threaten economic activity worth over one billion dollars annually. As an affected industry, we and our employees are not ready to see our livelihoods threatened should implementation of the National Ocean Policy result in funds being siphoned off from existing NOAA fishery programs.

Treatment of Commercial Fisheries

As we said earlier, the commercial fishing industry has now participated in this process for over a decade, through the oceans commissions, H.R. 21, its predecessor legislation, and now NOP. Our goal all along has been to preserve and strengthen the system of regional, stakeholder-driven fishery management that has worked so well in our part of the country. Even after all our attempts to participate, the Draft Implementation Plan ignores the points we have made and proposes the creation of a new ocean resource management system that appears to have few limits. Page 9 of the report states that “fisheries can be better managed” and that NOP “will improve future management decisions.” Our question is: Decisions made by whom? We suggest that either the Regional Fishery Management Council process be exempted from this entire program or that the NOP/CMSP/RPB process be revised so that it genuinely becomes the voluntary planning process we have been told it was intended to be.

The Nine Priority Objectives

The bulk of the Draft Implementation Plan describes specific actions the Administration intends to take to achieve the nine priority objectives. There are numerous milestones and deadlines for each. We will not take the time to go through the scores of actions and milestones laid out in the plan. However, we will highlight some which we believe are overly ambitious/costly or which seem to lead to the inescapable conclusion that NOP is more of a regulatory program as opposed to the transparent, collegial planning process we keep hearing about.

Overly Ambitious Action Proposals (target date):

- Page 19—Explore “the 95-percent of the ocean that remains poorly known.” (2014)
- Page 23—Enhance ocean education so that “a highly competent workforce is available for U.S. employers.” (2014–2017)
- Page 25—Assess the environmental knowledge of middle school students. (2017)
- Page 27—Develop and deploy within ten years a fleet of unmanned air, sea surface and underwater research systems. (2022)
- Page 32—Map the entire EEZ and continental shelf. (2017)
- Page 50—Address “planned and unplanned activities impacting coral reef ecosystems.” (2012)
- Page 56—“Integrate relevant socioeconomic monitoring information with ecosystem monitoring information to understand changes in coupled human-natural systems in selected areas.” (2013) [Perhaps this would be a more appropriate task for academia?]
- Page 57–58—Conduct research to assess direct and indirect impacts of climate change and ocean acidification on coastal communities, including estimations of mean sea-level rise, impacts on jobs, and effects on marine species. (2013–2015)
- Page 65—Provide funding to private landowners to help them reduce nutrient and sediment runoff. (2012)
- Page 67—Reduce air pollutants (sulfur, nitrogen, mercury) to the oceans and Great Lakes. (2012) Control storm-water runoff from the federal highway system. (2015)
- Page 74—“Protect 2 million acres of lands identified as high conservation priorities” (including 700,000 acres of forest) (2015)

Evidence that NOP is a Regulatory Program

- Page 4—“CMSP is an important tool for implementing EBM.” It will lead to a more “certain decision-making process for managing activities in the ocean”
- Page 6—“The NOC expects to complete and approve the final Implementation Plan in the Spring of 2012. Federal agencies will then implement its initial set of actions.”
- Page 11—“Existing regulatory requirements and programs that were developed based on a fundamentally different model may need to be modified”
- Page 12—“an EBM approach supports adaptive, iterative management.”
- Page 12—“various responses or actions may become necessary given the limits of existing regulatory or statutory authority.”
- Page 13—Find “opportunities to incorporate EBM principles into Federal laws, regulations, and policies”
- Page 15—“Establish a process for adaptive resource management”
- Page 39—“Review the interpretation and, as necessary, propose to strengthen content and/or application of Federal legislation. . . .to incorporate and better support climate change adaptation efforts.”

- Page 51-52—The Plan proposes to identify “important marine areas for management or protection”. This includes use of “national marine sanctuaries, national estuary programs, and national marine monuments.” “Priority species” would be protected using “Essential Fish Habitat (EFH) Provisions including Habitat Areas of Particular Concern (HAPC)”. This passage provides some of the strongest and clearest language that RPB’s, comprised principally of federal officials with no expertise in fisheries management, will develop CMS Plans that usurp the responsibilities of regional fishery management councils. Contrary to the stated intent of the NOP, the Plan creates confusion and ambiguity on EFH and HAPC responsibilities, as well as other areas of fishery management authorities, where none now exists.
- Pages 85—92—This section discusses Coastal and Marine Spatial Planning and the role of the Regional Planning Bodies. It lays out a detailed process for creation of the nine Regional Planning Bodies, implementation of CMSP, creation of CMS Plans for each region, and the presentation of these plans to the National Ocean Council for certification. This is to be accomplished by 2019.

One of the stated goals of CMSP is empowering coastal communities through a public planning process to make decisions about activities in their regions. This sounds fine until you realize that the membership of the RPB’s consists entirely of government officials, dominated by Federal representatives. The document states that “Members will be of an appropriate level of responsibility within their respective governing body to be able to make decisions and commitments throughout the process.” This sounds less like planning and more like regulation to us. The system is then removed even further from public/local control by the fact that once the RPB’s have developed their CMS Plans, these plans are submitted to the National Ocean Council (a group of 27 Federal officials). This Federal entity then decides if the plan is worthy of “certification”. Our presumption is that the next step would be implementation of the plan through new or modified federal regulations. Otherwise, what would be the point of the exercise? We make this statement despite the following discussion that appears on Page 109 of the document (the “Summary of Public Comments” section):

Public Comment: “The Administration should clarify that it will not be the purpose of the Regional Planning Bodies to override the duties of regional fishery management councils.”

Response: “The Executive Order expressly provides that Federal agencies will implement NOC-certified CMS Plans consistent with existing statutory authority, including the Magnuson-Stevens Act. Regional planning bodies will be established to develop these plans. They do not have any legal authority or mandate that would override the statutory or regulatory duties of any existing entity, including Regional Fishery Management Councils.”

We understand that the Regional Planning Bodies do not have independent legal/regulatory authority. The point is that the CMS Plans they create then go to the NOC for approval and implementation by every agency throughout the federal government. This process is clearly stated in the “Final Recommendations of the Inter-agency Ocean Policy Task Force” (July 19, 2010. . .page 65)—

“Agencies would incorporate components of the CMS Plan into their respective regulations to the extent possible. Adherence with CMSP would be achieved through Federal and State agencies and tribal authorities incorporating CMS Plans into their pre-planning, planning, and permitting processes, to the extent consistent with existing laws and regulations. The CMS Plan signatories would periodically review these processes and where legal constraints are identified, would seek to remedy these constraints, including by working with the NOC to evaluate whether a legislative solution or changes to regulations are necessary or appropriate.”

This clearly states that CMS Plans will be implemented government-wide, and that if new regulations are required to achieve the goals of the NOC, they will be pursued. We are not comforted by the boilerplate language about the process being “consistent with existing laws and regulations”. If an agency implements the NOP/CMSP plans in a way which, in our view, conflicts with an existing law or regulation, our only option would be to go to court. As the Administration is aware, few entities have the resources to file court challenges on a regular basis. All ocean user groups, not just the seafood industry, would have little chance of preventing the imposition of CMS Plan regulations.

In the end, this is the most critical point. Despite repeated rhetoric from the Administration that this is designed to be a bottom-up, stakeholder driven process with no regulatory authority, a plain reading of the Implementation Plan reveals a federally-controlled, closed-door effort that will compel 27 different federal agencies to

conform their regulations to comply with a regional ocean plan. Some have suggested adding an representative of the Regional Fishery Management Councils to each of the Regional Planning Bodies. The Administration has said yes, provided they are a federal, state, or tribal member of such. But suggesting the Councils need or deserve representation on the Regional Planning Bodies simply reinforces the fact that the RPBs will have regulatory authority over the Councils. If not, then why would the RFMCs need some sort of representation. Further, by specifying that an RFMC representative must be a federal, state, or tribal member, the Administration is further clarifying that the RPBs do not provide for true stakeholder participation.

WHO WINS?

Nowhere in the NOP Implementation Plan does it clarify how user conflicts in the ocean will be resolved. If we embark upon a regional ocean zoning effort, inevitably multiple user groups will want to ‘claim’ a particular area of the ocean, be it for fisheries, mineral resource extraction, renewable energy, recreational activity, or marine reserves. By what metric will a particular claim be awarded? Historical use of the area? Number of jobs created? Amount of money generated for the economy? National Security? Food Security? Least environmental impact?

When asked this question at a CMSP workshop last year, Administration officials responded that “science would decide”. But such a question is not wholly a scientific one. It is a social, economic, and even cultural decision that is far more nuanced. 27 federal bureaucrats deciding who wins and where among multiple ocean users does not provide for the stakeholder and public participation necessary to make such difficult decisions. The failure of the NOP Implementation Plan to specifically address this inevitable dynamic is incredibly naïve.

STATE EFFORTS

Some have argued that our concerns regarding the NOP Implementation Plan are overblown as several states are already implementing programs in state waters that are meeting with success. While I am not familiar with all of these efforts, I am familiar with the Coastal and Marine Spatial Planning law of Washington state. Enacted in March 2010 but not yet implemented due to lack of funds (see below), the Washington state CMSP law provides many protections for commercial fishing and other user groups that are lacking in the NOP:

- Section 1 (3)(h)(i) Establish an ocean stewardship policy that takes into account the existing natural, social, cultural, historic, and economic uses;
 - (i) Recognize that commercial, tribal, and recreational fisheries, and shellfish aquaculture are an integral part of our state’s culture and contribute substantial economic benefits;

The Washington State measure recognizes existing uses and notes the “substantial” economic benefits of such uses, including commercial fishing. About the only references to commercial fishing in the federal NOP relate to overfishing. In fact, given that we have now placed all federal fisheries under Annual Catch Limits as required by the Magnuson-Stevens Act and are rebuilding overfished fisheries, the NOP references seem outdated.

- Section 6. (2)(f) Protects and encourages working waterfronts and supports the infrastructure necessary to sustain marine industry, commercial shipping, shellfish aquaculture, and other water-dependent uses;

Again, Washington State’s statute emphasizes the importance of sustaining commercial activities by ocean users, including investing to support these uses. The overall tone of the Administration’s NOP is one of restricting current users.

- (5) If the director of the department of fish and wildlife determines that a fisheries management element is appropriate for inclusion in the marine management plan, this element may include the incorporation of existing management plans and procedures and standards for consideration in adopting and revising fisheries management plans in cooperation with the appropriate federal agencies and tribal governments.

Paragraph 5 gives deference to the fishery management authority to determine whether to incorporate fisheries management elements into marine management plans. Fishery management responsibility is clearly expected to remain with the current decision making body. The NOP could result in fishery management councils developing management plans and RPBs developing CMS Plan components (say, establishing MPAs over 40% of an ecosystem as some advocate) that should remain solely under the purview of the relevant fishery management council. This is our concern about creating a second fishery management process—in this case one without fishery management expertise and without fishery participants involved in the decision making process.

- (6) Any provision of the marine management plan that does not have as its primary purpose the management of commercial or recreational fishing but that has an impact on this fishing must minimize the negative impacts on the fishing. The team must accord substantial weight to recommendations from the director of the department of fish and wildlife for plan revisions to minimize the negative impacts.

Paragraph 6 is a complement to paragraph 5. It cannot stand alone. While paragraph 5 preserves the current fishery management decision making process, paragraph 6 makes clear that any action that affects fishing but whose primary purpose is not to manage fishing *must minimize the negative impacts on fishing*. There is no such consideration in the NOP for effects on fishing from CMS Plan elements.

- (7) The marine management plan must recognize and value existing uses. All actions taken to implement this section must be consistent with section 8 of this act.

The language stating that a Washington State CMS Plan must “recognize and value existing uses” is very helpful and supportive of current users. There is no such guidance in the federal NOP policy.

If the NOP paralleled the Washington state law, I suspect you would face far less opposition to the NOP from commercial fishing organizations nationwide as well as other current ocean user groups.

THE COST

In addition to the substantive concerns outlined above, we are also deeply concerned about how this overreaching and expansive effort will be paid for. The President’s proposed FY13 Budget contains no budget for implementation of this new National Ocean Policy. Instead, the agencies charged with participating in implementation have stated that their efforts will be funded through their existing budgets and appropriated dollars because “implementation of the NOP is consistent with [their] existing statutory obligations and appropriations.” In other words, the Administration intends to funnel money away from congressionally-authorized and funded activities such as fisheries stock assessments and ecosystem research to support a new layer of federal bureaucracy. Ironically, funds will be diverted from the very activities that the NOP itself says need to be increased and improved!

The Administration is implementing NOP with neither congressional authority nor with congressionally-approved funding. Given the absence of an NOP implementation line item we believe Congress should include in each relevant appropriations bill (covering all 27 agencies identified by the NOP) a prohibition on the use of funds within that bill for the implementation of the NOP.

CONCLUSION

As we said earlier, we would prefer that the Regional Fishery Management Council process be exempted from this program. If not, then we request that the final NOP Implementation Plan categorically state that nothing in the plan will lead to either new or modified Federal regulations. If this is a collegial, voluntary planning process, as we have repeatedly been told, we are happy to participate. If this is a new Federal bureaucracy whose aim is to regulate virtually all ocean activities, then we prefer to opt out until such time as Congress has provided specific authorization for such a program. Thank you for the opportunity to testify today.

The Seafood Coalition

November 7, 2011

The Honorable Doc Hastings
Chairman, House Natural Resources Committee
U.S. House of Representatives
1324 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Hastings:

The Seafood Coalition is writing to express its appreciation to you for holding two recent hearings on the Administration’s National Ocean Policy (“NOP”), which includes the controversial ocean zoning component of Coastal and Marine Spatial Planning (“CMSP”). The testimony received at the Natural Resources Committee hearings highlights the need for Congressional action barring the Administration from continuing to divert appropriations from authorized programs to implement an ill-conceived NOP that is not authorized by Congress and that threatens fishing industry jobs.

The Seafood Coalition is a broad national coalition that includes commercial fishing interests, seafood processors, and coastal communities. This broad-based group, which includes members from every region of the U.S., accounts for about 85 percent of the seafood landed annually in the U.S. We are a diverse group, but united in our opposition to the Administration's NOP. The Administration has turned a deaf ear to the seafood industry's concerns in implementing NOP, choosing instead to push ahead with a new "top down" bureaucracy empowered to develop plans and to restrict ocean uses through regulations issued under an array of oceans-related statutes.

The concerns raised by the Seafood Coalition have been articulated previously by this organization. In May, 2008, the Coalition wrote to then-Natural Resources Committee Chairman Rahall requesting changes in H.R. 21, an ocean policy bill introduced in multiple Congresses and almost indistinguishable in its provisions from the NOP. The bill won little support over the past decade, and accordingly, made very little headway. This history suggests both that advocates of the NOP recognize that Congressional authorization is necessary and that they remain unwilling to work with the oceans community to develop a measured and economically sound policy.

We highlight for Congress three specific concerns with the NOP initiative that can be addressed by prohibiting federal spending on this unauthorized program:

1. The NOP creates a federal ocean zoning regime that will likely result in substantial new regulations and restrictions on ocean users. The *Final Recommendations of the Interagency Ocean Policy Task Force* report, which is incorporated by reference into the NOP Executive Order 13547, establishes nine regional planning bodies ("RPBs") composed of government entities and charged with developing ocean zoning plans. According to the Task Force recommendations, *"The plans would be adaptive to allow for modification and addition of new actions based on new information or changing conditions. Their effective implementation would also require clear and easily understood requirements and regulations. . . that include enforcement as a critical component."*
2. The NOP creates a new "top down" bureaucracy that supersedes the "bottom up" regional fishery management council system and other effective management systems.

As noted above, the RPBs will be composed primarily of federal agency officials with some participation by state officials and tribal representatives. This contrasts with regional fishery management councils and the bodies responsible for other management programs established by the Magnuson-Stevens Act. The regional fishery management councils and other "bottom up" management programs which develop plans for managing fishery resources in federally managed waters, are composed largely of private citizens appointed by the Commerce Secretary. The NOP empowers the RPBs to manage activities in federal waters, including fishing activities, creating a confusing and duplicative fishery management system and usurping the jurisdiction of existing regional fishery management councils and other effective management bodies.

3. The federal government is currently diverting money authorized for other purposes, including funds that are better used for fishery survey research and monitoring programs, to create the new NOP regulatory program. Without fully funded fish stock assessment programs, fishery managers must be precautionary and set lower harvest limits given less information will be known about the size of fish populations. Diverting money from important science functions of NOAA Fisheries leads directly to job losses and lower incomes for fishermen and processing workers and adverse economic impacts for already struggling coastal communities.

For these reasons, and more, the Seafood Coalition asks Congress to bar further diversion of fund from authorized programs to implement the NOP. Thank you for considering these views.

Sincerely,

Nils Stolpe for the Seafood Coalition
 Seafood Coalition member organizations
 Alaska Bering Sea Crabbers
 Alliance of Communities for Sustainable Fisheries
 American Fishermen's Research Foundation
 At Sea Processors Association
 Blue Water Fishermen's Association
 Coos Bay Trawlers Association
 Deep Sea Fishermen's Union

Directed Sustainable Fisheries
 Fisheries Survival Fund
 Fishermen's Association of Moss Landing
 Garden State Seafood Association
 Groundfish Forum
 Monkfish Defense Fund
 North Carolina
 Fishermen's Association
 Omega Protein, Inc.
 Oregon Trawl Commission
 Organized Fishermen of Florida
 Pacific Coast Seafood Processors
 Pacific Whiting Conservation Cooperative
 Southeastern Fisheries Association
 Southeastern Fisheries Association/East Coast Fisheries Section
 Southern Offshore Fishermen's Association
 United Catcher Boats
 Washington Dungeness Crab Fishermen's Association
 Washington Trollers Association
 West Coast Seafood Processors Association
 Western Fishboat Owners Association

Dr. FLEMING. Thank you, Mr. LeBlanc. At this point we will begin Member questions of the witnesses. To allow all Members to participate and to ensure we can hear from all of our witnesses today, Members are limited to five minutes for their questions. However, if Members have additional questions, we can have more than one round of questioning. I now recognize myself for five minutes.

Mr. Zurn, I am from the Federal Government, and I am here to help you. Does that make you feel good?

Mr. ZURN. Yes, sir. That does make me feel good.

[Laughter.]

Dr. FLEMING. If I were you, I would be very concerned. You know, I am saying this tongue-in-cheek, but we could go through many examples of where well-intentioned Federal Government agencies, Congress, and even the White House have been very well intentioned, and made things a lot worse. And I gather from your testimony, and from some of the others here today, that there is a whole list of concerns about the impact of this National Ocean Policy, which sprang up all of a sudden from the Oval Office without any involvement of Congress, whatsoever.

So, what do you see as the most egregious, the most significant negative impact from the implementation of this?

Mr. ZURN. Well, sir, as I mentioned, we just concluded a several-year process in the State of California where we were—the recreational fishing community was pretty much excluded and ignored in much of the decision-making process. And as I pointed out, in other States we were actually, by statute, included, involved, and had a seat at the table. My concern is in this process so far, even though through numerous attempts to be involved, to have input, and to be—to have a seat at the table, we have pretty much been—largely been ignored.

Our goal is that—we understand that this very much looks like another layer of bureaucracy. Our goal is that, with recreational fishing, that our impact on the environment is far less than some of the other things that are included in this. And we just feel that

it is going to very much continue to limit the recreational fisherman's ability to have access—

Dr. FLEMING. Sure. So, really, those who are affected the most under this policy, in your view, would have little or no say into that, I think is—you are saying is the most significant part of this.

Mr. ZURN. Yes, sir.

Dr. FLEMING. And I certainly understand that. Mr. Mannina, I am very interested in your views. You say that, in essence, this is unconstitutional. This is the Executive Branch reaching out of its scope and taking up perhaps the Legislative Branch's authority. And I tend to agree with you on that.

One of my concerns—and I think you outlined this very clearly—is what happens on a farm in Idaho, in theory, would be involved in this National Ocean Policy. So people who think that this is only about oceans are going to be sadly mistaken when they see this, if it is ever implemented.

So, if it has such broad affect over the Nation, the rhetorical question here—and I am going to get to my real question—is then, why is it that all of that power be vested in one person, in essence, which is the President of the United States?

But let's go a step further. We now have government having completely taken over our financial industry. The government has now completely taken over the health care industry. And we, Congress, in the process, have abdicated much of our powers to the Executive Branch. We have thousands of people writing regulations that we in Congress have no idea what they are going to look like very soon. Even the Independent Payment Advisory Board, where you have 15 unelected individuals, will be making the major decisions about health care.

So my question to you, sir, on a constitutional basis, is this not really just, again, a conglomeration, if you will, a formation of all the power into one office, and certainly one person, making Congress irrelevant? And trust me, I have a good job back home I am happy to go to. But if I am up here, I want to exercise the powers for my constituents that they sent me up here for. I would love to have your reaction to that.

Mr. MANNINA. Thank you, Mr. Chairman. I do believe that the Executive Order and the National Ocean Policy are beyond the Presidential authorities vested in either the Constitution or by statute enacted by the Members of this Congress.

If this policy is to have legal force and effect, I believe it is up to you, the Members of Congress, to enact legislation to give the administration the power. If you do not do so, I do not think they will have that power. And I must say, as a practicing lawyer, if you do not, I expect that those of us who do this will enjoy many, many years and billable hours litigating this.

Dr. FLEMING. So you are saying this is the enrich lawyers policy.

Mr. MANNINA. And there is nothing wrong with that.

[Laughter.]

Dr. FLEMING. I well understand that. Well, again, I would just—it seems to me, just in closing in my questions, that this is again another attempt—and we go back to the energy policy, with cap and trade—where the President, being unable to do through Congress what he would like to do, and those who maybe support him,

attempt to do a run-around Congress. And, unfortunately, that is not the way the Framers of the Constitution intended this.

So, with that, I yield to my good friend, Mr. Sablan, Ranking Member, for five minutes.

Mr. SABLAN. Well, thank you. Thank you very much, Mr. Chairman.

Mr. Gibson, good morning. Mr. Gibson, could you tell us under what authorities is the administration conducting marine spatial planning?

Mr. GIBSON. Well, I understand that the President has the authority to do this through Section 3 of Article 2 of the U.S. Constitution. That is what my lawyers told me.

Mr. SABLAN. So you are relying on lawyers, and there is nothing wrong with that. I think there is one right next to you.

Mr. GIBSON. I know.

Mr. SABLAN. So we have also heard a lot today about how government regulation is threatening fishermen and our fisheries. What do you consider to be the most significant threats today that would cause fishermen to pull up empty hooks?

Mr. GIBSON. Well, we are doing a great job rebuilding fisheries, but we are doing a terrible job managing the habitat that they depend upon and the water that they swim in. Declining habitat, declining water quality, those are certainly the two greatest threats to recreational fishing.

Mr. SABLAN. Yes, I come from an area where I grew up where I could expect that four dinners a week would be fish. One fish today, one fish. But there are also people in my island who—in my place, where a certain family is, for some reason, does not catch a certain fish. So there is always—other families would have access to the fish, and they shared, they do this by sharing. And so, that is—I am not sure if it is conservation, but it is a great program, actually.

So, let me ask—the staff want me to ask here. In your testimony, Mr. Gibson, you said that wave energy, agriculture, they are all coming, and we must have a plan to develop and site this industry responsibly. If we don't, chaos will ensue. If we don't, chaos will ensue, and fishermen will lose out. Can you give us an example, provide us an example from your own experience—that would be great—where the lack of comprehensive ocean planning caused fishermen to be left behind in the initial decision-making process?

Mr. GIBSON. Yes, sir. A few years ago the town of Palm Beach wanted to dredge and fill about—I think about five miles of beach where I grew up. They never asked us if that was OK with us. This is where I catch bait, this is where I surf, fish, this is where—I mean, the reef support, all the—they are the nursery habitats for the things we catch offshore. They were going to dredge within 200 feet of a coral reef, a Federally protected essential fish habitat. And we had to sue them. And it took, I think, over five years of fighting them to stop this project. We were never given a chance to voice our concerns, and we were bullied for voicing them.

And I will give you one more pending example. You know, North Carolina and South Carolina are very, very aggressively pursuing development of wind energy offshore, and we welcome, you know,

this new clean energy. It is just we just want to make sure it is put in the right place, not where we are fishing.

Mr. SABLAN. And so, see, planning works, because when I was growing up, dinner was four times a week is fish. If I choose today, I can have dinner three times a week fish, of course, you know, growing population and the increasing fish population. But the planning is there. And the regulation, unwritten and not Federalized, is actually—we regulate ourselves among ourselves.

So, Mr. Gibson, how—you earlier said you had to hire lawyers. And how long were you involved in lawsuits to prevent massive dredge and projects that—at Florida's—can investing in a National Ocean Policy actually save taxpayers millions of dollars? And if so, how?

Mr. GIBSON. Well, for example, the issue of dredging—it is one of the themes that perpetually emerges as a threat. And usually for these so-called beach nourishment projects, they are just nothing but perverse subsidies that I hope some of these gentlemen will address. What we need is a comprehensive sediment management plan for the entire region, instead of, “Oh, we got a hot spot here, dredge here. Oops, that was a coral reef we just trashed.” “Oh, that was where that guy’s favorite spot to shoot groupers,” or whatever.

You know, if we can take—instead of having to deal with these projects project-by-project, issue-by-issue, slogging through the quagmire of Federal agencies and permitting, if we can come up with a plan that addresses these proactively, these recurring issues proactively—and I believe we can through the National Ocean Policy process and the regional planning bodies—it will save everybody a ton of time and money, from the government down to a little guy like me.

Mr. SABLAN. Yes. And actually, just a comment, a short commentary to Mr. LeBlanc, because I was—earlier I said this Laolao Bay. We are actually spending money to do something to prevent runoffs into Laolao Bay, because it is such a beautiful ocean area of corals and fish, and we want to protect that from runoff. So spending money is—on protecting the oceans is actually very good policy, sir. And thank you. My time is up, Mr. Chairman.

Dr. FLEMING. The gentleman’s time is up. Next is Mr. Southerland for five minutes.

Mr. SOUTHERLAND. Thank you, Mr. Chairman. You know, I have been amazed, since I have been here for 15 months. In the 15 months that I have been here, we have seen the President, in his involvement in the Libyan action, which was a violation, I believe, of the 1973 War Powers Act. We have seen a violation of the Constitution in recess appointments, when we weren’t [sic] in recess.

The—we have now learned that the health care bill, the violation of Rights of Consciousness—the health care bill, which is the signature piece of legislation that the President doesn’t ever want to talk about any more, certainly when he has a joint session of Congress doesn’t even mention, and because its constitutionality is so subject to questioning, it will probably be the most viewed and followed Supreme Court case in our Nation’s history coming up here very, very shortly.

I am amazed that, as you stated out, sir, that, you know, the very shaky ground that the Oceans Policy is on—I mean we are

seeing a pattern here. And I think if it walks like a duck and it quacks like a duck, it is a duck. I think the American people can understand that. I don't think that is complicated. I think that is common sense.

It is interesting, Mr. Gibson—and I am from Florida, as well—your trust in—that government can, since it has created this chaos that we find ourselves in, the waste of money in and of itself—and I could really tell all I need to tell about you or anybody else in this room by just looking at your check registry. I can see the priorities in your life. I can see what matters to you. I can see how benevolent you are. I can see how much money you spend on your hobbies. I can tell everything about you. And when I look at the United States Government's check registry, it is pathetic.

And so, I am curious. How does a common sense individual like yourself—you seem to be—place so much trust in a Federal Government whose check registry and whose record on, in the last three years, on constitutionality, or the question thereof, how do you place such trust in such a monstrosity that has grown out of control?

Mr. GIBSON. I have to, because the existing system—

Mr. SOUTHERLAND. And why do you have to?

Mr. GIBSON. Because the existing system is killing me.

Mr. SOUTHERLAND. You understand the existing system is what you are wanting to add to? That is like saying bad is hurting me, so therefore I am just going to trust more bad.

Mr. GIBSON. The point of the National Ocean Policy is to streamline and harmonize—

Mr. SOUTHERLAND. No, no. No, sir. No, sir, it is not. It is not. Because at no point in time in the National Ocean Policy does it do away with any other institutions that are currently creating your headache.

Mr. GIBSON. It brings them out in the light of day.

Mr. SOUTHERLAND. Sir, they can come out in the light of day now. We don't need the Federal Government to tell us, "Turn on a light." We don't need the National Ocean Policy or the Federal Government to tell two States they can communicate and talk. That is common sense.

Please tell me you don't have to trust the Federal Government to tell you and another fishing buddy that you can talk. And if it applies to individuals, it applies to States. We do not need the Federal Government, and we cannot trust the Federal Government to do the very basic things in our life that God gave us the common sense to do. And I am blown away, blown away, in your trust of the Federal Government.

Mr. GIBSON. This is a managerial directive from the administration to make these agencies talk.

Mr. SOUTHERLAND. To make these management—OK. We are never going to agree on that, because I can tell you this. When Lubchenco comes before this committee and she states that the oceans policy creates no more regulations, none—in a congressional hearing—none, and then the Federal—and the oceans policy itself clearly states on page 30 that it will create more regulation, I will ask you the same question I asked Ms. Lubchenco. Who is wrong? Is the President wrong? Or is Mrs. Lubchenco wrong?

Mr. GIBSON. It is not a question of whether there is going to be new regulation. Agencies and lawmakers such as yourself promulgate new—

Mr. SOUTHERLAND. No, no. We are not going to promulgate new regulation on fishermen. I can tell you that right now. We are not going to do that on this side of the aisle.

Mr. GIBSON. It is the basis from which those regulations emerge. And this gives us a seat at the table through our council representation on the regional planning body, to make sure that these regulations are common sense and fair.

Mr. SOUTHERLAND. So my point to you is, does the national policy—does the oceans policy create new regulations on the American people?

Mr. GIBSON. It has no authority to do so.

Mr. SOUTHERLAND. Well, then, why does the President say he is on its website, that it does create new regulation? So you are saying the President is wrong?

Mr. GIBSON. I am not familiar with the page on the website.

Mr. SOUTHERLAND. It is 30. The American people can go see it. OK? Ask Ms. Lubchenco. She disagrees with the President, obviously.

You place incredible trust, and I will say this in closing. You need to tread lightly, because this beast up here, a government big enough to meet all your needs, is a government big enough to take every single thing you own. I yield back.

Dr. FLEMING. Next, Mr. Faleomavaega for five minutes, sir.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman, for calling this important hearing. I think it is most appropriate. But this issue did not just come about yesterday. This issue has been around for years.

As I recall, I noticed, with the exception of Mr. Zales and Mr. LeBlanc, we have some very expert witnesses who are members of the legal profession. I think I recall one of the Shakespearian plays that I think it was mentioned—I don't know which Henry that was—but the first thing we do, we kill all the lawyers. I meant that as a sense of humor to our distinguished attorneys here. First thing we do is that we kill all the lawyers. I think our attorneys will have a feast if this ever becomes challenged and have to be taken before the courts.

Mr. Chairman, and to our distinguished experts, I have always taken the view always as a challenge of establishing a balance between conservation and the commercial and the recreational interests, especially as it relates to the marine resources that are in the oceans. Regulation is to assure continuity of the species.

I recall years ago the swordfish industry in New England, some 150 of our fishing boats on the New England had to go to Hawaii, because there was no more swordfish to fish in the New England States. The question of conservation versus the ability of continuing the—providing the species of fish that is helpful not only to the economy of those who rely on commercial fishing as well as recreational, I think there is no question about that.

The question that is part of our national interest to establish a national policy on oceans, as I—am I correct in some of the figures that were given? We are talking about some 1.5 million square

miles of oceans, whether it be the Atlantic or the Pacific coast, up in Alaska, quite a bit, the effect that—our entire fishing industry, we are looking at about 1.5 million people whose—workers that depend on the oceans.

I can say a little bit—I think I know a little bit about the ocean. I come from a little place in the South Pacific, the largest ocean in the world, if you want to put it in those terms.

So, yes, I want to share with the—our expert panel here, in terms of the key factors related to our National Ocean Policy that the President felt needed, because it appears to me—because Congress has not moved in establishing a National Ocean Policy legislatively or statutorily. And, if I am correct, as I read here, the National Ocean Policy does not alter any government authorities, and does not require new legislation to be implemented. The National Ocean Policy does not restrict any ocean, coastal, or Great Lakes activity. Our National Ocean Policy does not levy any fees or licenses or taxes.

I can go on with some of the other things that are provided here. It is my understanding before the President issued this Executive Order there were some 5,000 public comments that were submitted to the administration for consideration. And about 400 contributions, in terms of all the mix that went into ideas and things that were brought in.

I noticed that one of the gentlemen said that they were never consulted, or they never had an opportunity to sit on the table to be consulted. Well, I don't know what happened in the consultation process.

But I just want to say that as much as we like to hammer the government as if the government is the source of all evil and all the problems that we have in our government, I would like to submit also that there is a very, very important role that government plays when you are talking about the safety. When you are talking about all these things, you have to take those into consideration. But at the same time we have to also understand, in a democracy and free market system, that for economic growth we have to allow the private sector to prosper just as much as any other activities, as it relates to the resources. Tremendous resources that we have in our oceans.

So, I see my time is almost up, and I had 50 questions I wanted to ask our panel, Mr. Chairman. But I do want to say that I appreciate the different points of view about this issue. But I happen to be one who says that the President has taken this initiative and his leadership in doing this, simply because Congress has not acted. The Pew Foundation report that was given years ago, major, major report, but we have not acted on any of these important things. So maybe that is the reason why the President has taken this initiative by issuing the Executive Order, to complement. Not to compete, not to take away anything that we have already taken by law in that circumstance.

Mr. Chairman, I know my time is up, but I will try for the second round. Thank you, Mr. Chairman.

Dr. FLEMING. The gentleman yields. Next, Mr. Duncan from South Carolina.

Mr. DUNCAN. Thank you, Mr. Chairman. And I don't know how I can say it any better than my colleague from Florida has said it already. But I want to continue that discourse a little bit, Mr. Gibson, because I feel like you need to go back and read the Federalist Papers, read the Constitution, read what our Founding Fathers envisioned for America. And I will refer in a document known as the United States Constitution, Article 1, Section 1, says, "All legislative powers here and granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives."

I go on to read Article 2, Section 1, the executive powers of the presidency. And the executive power—the Executive Orders that he assigned, they are not listed in here. So we have a President who has created 106 new regulations that cost the American taxpayer 46 billion additional dollars right there.

Looking at Executive Order 13547 that creates this particular issue that we are talking about today, that is a—America, that is looking today—take a look at it. We continually see the over-reach of the Executive Branch that erodes the freedoms of Americans.

I think about this agency in context with what I see going on inside the Beltway and in Washington, D.C. I stood in the back of the United States Capitol the other day and I counted nine construction cranes in the degree of the horizon that I could see, just looking down the Mall. Nine construction cranes.

Now, why is that important? Because it made me start being aware, as I rode around Washington, how many construction cranes I see inside the Beltway. And why is that important? It is important because I don't see them in Greenville, South Carolina, or Anderson, South Carolina, or Charlotte, North Carolina, or Orlando, Florida, or Nashville, Tennessee, or Dallas, Texas. But I see them here. Why? Why is that important? Because this government is growing so large based on this kind of stuff coming out of this administration, that government is growing. And the support industry, the office buildings, the apartment buildings, the new buildings that Department of Homeland Security and other places—this government is growing so large, and we are \$15.5 trillion in debt.

So, I see this particular issue, which I believe is the furtherance of this administration's desire to adhere to the United Nations, and the laws of the Sea Treaty, because the regulation itself allows the Federal Government to regulate waters that flow into the oceans, all the way up through the State of Louisiana and through the State of Florida and through the State of South Carolina, all the way across the Midwest to the Great Lakes, to regulate those with—and it says here that States may opt out of serving on the RPB.

However, the RPB will continue with the zoning plan, regardless of the States' participation, regardless of—where are the states' rights in this? Where is the proper role of the Federal Government, as based on the United States Constitution, and where is the States' rights with regard to the waters within that State? There are waters that begin in South Carolina that flow into the ocean, and the State of South Carolina ought to have some jurisdiction over its own waters.

Now, it says that States can opt out of this, but the Federal Government is going to continue with their zoning plan, regardless of that. And this is true, even if all the States in the region decline to participate. "Any State which agrees to participate in the planning process will be required to make sure all State-permitted activities meet the guidelines and goals of the zoning plan." Now, where I come from, that is an unfunded mandate from the Federal Government to the States to comply with this policy, against the States' wishes many times.

So, Mr. Chairman, I don't have any questions for the panelists. I believe Mr. Mannina summed it up very well. Thank you for your comments earlier. I think America needs to wake up to Agenda 21, the United Nations, and this administration's violation of our liberties, violation of the proper role of the Federal Government and the State governments. This is an epitome of that. This is the prime example of a Federal overreach with regard to the States. And with that, I yield back.

Dr. FLEMING. I thank the gentleman. And I think we have interest in another round of questioning. So if our witnesses are willing, we would love to start back again.

Mr. Gibson, I would like to return to you. And I am going to move away from the constitutional and legal arguments. But I would like to tell you that your optimism of what the Federal Government can do is very inspiring, it really is. But let me tell you my background.

I am a physician. Went into private practice in 1982. And with each new rule, law, and regulation that came out since I started my practice, particularly with regard to Medicare, SGR, CLEA, RBRVS—all of these are acronyms that probably are not familiar to you. But I can tell you, with each and every one of them, it made my life and the life of my patients more and more difficult, and it cost the Federal Government a lot more money.

So, I have to tell you I came to Washington somewhat cynical about what government can do for you, and certainly what it does to you. But I did keep a little bit of an open mind. But since I have been here three-and-a-half years, I can tell you that that little open mindedness has closed very rapidly. I am very cynical about what the Federal Government, apart from the Constitution and apart from law—every time the Federal Government gets involved with new laws and regulations, we just simply see more problems for the American people, and more cost for the taxpayer.

But I want to turn to you, Mr. Mannina, one more time about, I think, an important question. And that is, what, if any, are the enforcement mechanisms to this policy?

Mr. MANNINA. The Executive Order directs each Federal agency to implement the national policy. And the President does have the authority to direct his agencies to do things. That said, however, I think that the direction falls outside his legislative authority, delegated authority. He can tell an agency what to do, but I don't think he has the power to tell them to do the things that the National Ocean Policy asserts. Without this Congress—as Mr. Faleomavaega said a moment ago—without this Congress taking action to authorize it, I don't think it is a properly delegated legislative authority.

Dr. FLEMING. But you must well understand that we have seen the President do a lot of things that we don't think he has the power to do. You just heard Mr. Southerland talking about launching an attack on Libya without even consulting Congress. We feel like that is a direct violation of the Constitution, and overreach of power.

So, my question to you, barring, you know, some sort of litigation that goes to the Supreme Court, is it, in fact, possible and perhaps likely that the President will attempt to enforce the National Ocean Policy?

Mr. MANNINA. The Executive Order is quite clear that Federal agencies are directed to implement the National Ocean Policy. So the answer to your question is yes.

The secondary question you are asking, sir, is will there be litigation, and I think there is no question about it. I would be foolish to predict the outcome. I mean the Supreme Court, distinguished men and women, disagree by five to four votes frequently. But I think there is a reasonable case that can be made that this is beyond the President's authority to execute the laws, because I don't think you have delegated that authority to him, sir.

Dr. FLEMING. So, short of a constitutional question, and all the litigation that could derive from that, it is quite possible that the President, acting through the agencies, could implement a lot of policies that could be very harsh and harmful to a lot of people, damaging a lot of Americans, until the question is settled.

Mr. MANNINA. There is no question this could be implemented. And I think I will leave to you gentlemen and your colleagues the decision as to whether it is wise or unwise. But I will tell you that I think that it effectively amends a number of statutes. You laid out a management program, for example, the Magnuson-Stevens Act. That is effectively amended through the National Ocean Policy. Maybe that is what you want to have happen, maybe it is not. But as someone who worked on the Magnuson-Stevens Act for many, many years, I have always been in favor of the congressional process to outline the statutory—the delegated statutory authorities.

Dr. FLEMING. Right. And again, doubling back to my original question—and that had to do with the fact that as we went along with Medicare and more and more governmental involvement, the more headaches, difficulties, and problems for the American people, the taxpayers, the physicians, and patients. And so I came to Washington hoping that we would reverse that, and move back to days when things actually worked once again.

And in fact, what happened was we had Obamacare, which doubled down on that. And I would love to show you a chart today of what Obamacare will look like, in terms of the many, many different layers of bureaucracy. And Mr. Mannina points out very clearly that though there may not be constitutional authority, that in fact, many of these policies will be carried out.

I do have one quick question, though, for you, Mr. Gibson, that is kind of a housekeeping matter. You note that a representative of the Fishery Management Council may be able to sit on the regional planning bodies. While I understand this announcement was

made at the recent meeting of the council chairman, have you anything in writing confirming that?

Mr. GIBSON. No, sir. But I have been led to believe that that is true. Best of my knowledge, that is true.

Dr. FLEMING. OK. Now you understand that a lot of people are led to believe a lot of things in Washington that don't come true. So I would challenge you that, before you make that statement again, that you get it in writing.

With that, my time is up. And I believe Mr.—oh, I am sorry. Mr. Markey is now recognized for five minutes.

Mr. MARKEY. Thank you, Mr. Chairman. Mr. LeBlanc, the House has passed legislation in this committee's jurisdiction that would open the Bristol Bay and the Aleutian Islands in Alaska to oil drilling. The crab group of independent harvesters who have joined your testimony today and other fishing local and Tribal organizations from the Bristol Bay area oppose oil drilling in these incredibly important fishing areas.

In 2008, Brent Paine, the Executive Director of the United Catcher Boats suggested that areas in the Eastern Bering Sea that are more valuable could be zoned to not allow oil and gas development.

Mr. LeBlanc, do you oppose the Republican legislation to open up the Bristol Bay and Bering Sea to oil drilling?

Mr. LEBLANC. Thank you, Mr. Markey. Yes. United Catcher Boats has expressed its opposition to opening up those areas to oil and gas, both to this committee as well as to our colleagues—your colleagues on the Senate side.

Mr. MARKEY. Thank you. If oil drilling does move forward in these areas, don't you think the Alaskan fishing industry will want to have a say in how, where, and when that happens?

Mr. LEBLANC. Yes, and I believe we do.

Mr. MARKEY. Do you trust the Bureau of Ocean Energy Management will take care of Alaskan fishermen, even if your needs are in conflict with the needs of the oil industry?

Mr. LEBLANC. Well, I don't know that I would say I trust them to inherently take care of or address commercial fishing concerns, I don't believe that a regional planning body would do so, either.

Mr. MARKEY. So, I think that we know that geologic oil will win out over fish oil, in my opinion, unless we have something like a National Ocean Policy and the regional planning bodies that it will create to bring stakeholders together to work through these conflicts is in place.

Because there is a saying in Washington, an old saying, that if you are not on the table you are on the menu. And when it comes to our Nation's oceans, more and more guests are coming to dinner. We need to ensure that fishermen will always have a seat at the table. And the National Ocean Policy provides the recipe to help us to do that.

Following a decade of bipartisan discussion and stakeholder engagement, including countless recreational and commercial fishermen, President Obama established the first-ever National Ocean Policy in July 2010. Creating such a policy was a cornerstone of the 2004 recommendations of the President Bush-appointed Commission on Ocean Policy. Now, in March 2012, following even more

public engagement, the draft National Ocean Policy Implementation Plan is open for public comment.

Today, the Majority is holding a hearing which appears aimed at denouncing the impact that a not-yet-final plan will have on fishermen. This is like casting your net before the boat has left the dock, or even has all the fishing gear aboard. Recognizing the important role that fishermen play in our national economy and our national identity, the administration has responded to the concerns of fishermen as it has worked to finalize its draft plan. They announced the Stevens Act and all relevant State and local laws—let me repeat what has been clearly stated by numerous Administration witnesses during three previous hearings in this committee. This policy does not supersede existing authority or create any new regulations.

Implementing an ocean plan will optimize these existing efforts to protect and restore the ecosystems that fish and fishermen depend on. Fishermen flourish when fish flourish. The National Marine Fisheries Service estimates that rebuilding America's ocean fish populations will provide an additional \$31 billion in annual sales, and create 500,000 new American jobs.

Protecting America's fisheries will help create jobs and strengthen U.S. food security. Currently, the United States imports 80 percent of its seafood. Growing uses within our ocean and coastal areas, coupled with a changing climate, are placing significant pressures on our ocean resources. The National Ocean Policy will help build a secure domestic seafood system to sustain jobs here at home. We need less focus on fear mongering and more focus on supplying fish mongers. Implementing the National Ocean Policy will promote vibrant, sustainable fisheries, so that we will have American fish caught by American fishermen on the table now, and in the future.

I thank you, Mr. Chairman.

Dr. FLEMING. The gentleman yields back. Next, Mr. Sablan.

Mr. SABLAN. Thank you very much, Mr. Chairman. As a delegate from the territories, one of the most enjoyable thing I do here is watch the delegate from the District of Columbia argue that the Federal Government really has no business in trying to run the affairs of the government or the District of Columbia. I just hope that my colleagues here who are saying this today would listen to that lady fight for her people. Because it works, if it is in their favor. But when it is for other people, it is the other way around, that the Federal Government has business in local affairs of a State government. And, in this case, the District of Columbia.

This is rambling. But, you know, delegates are supposed to stay in the middle, make no noise, and survive, but I can't just continue to allow the ramblings.

The—there was in 1981 Executive Order 12291 that—that was President Reagan. When he similarly sought to achieve greater regulatory consistency across the Federal Government with the stated goal to reduce the existing burden of existing and future regulations. While that may be different from the National Ocean Policy, it attempted to accomplish—goes to recreation of new mechanism structures and processes in the Office of Management and Budget

then. And, you know, lawyers from President Reagan's Administration felt that he had the authority to do that.

And just like as President Reagan used his constitutional authority to harmonize regulatory consistency across the Federal Government, let me make it clear that President Obama is utilizing that same constitutional authority as a basis for directing agencies to get engaged in the CMSP process.

As the sole constitutional officer responsible for the full suite of ocean-related legislation to be executed, the President is just—is responsible. It is his duty for using his authority to ensure that agencies are not isolated from one another, like Mr. Gibson said. So agencies can talk to one another and have appropriate mechanisms in place to tackle complex cross-jurisdictional public policy problems, because we don't have here in the United States what we have in my home, where we don't need to regulate it, because families know their responsibilities, that that kind of fish is not for us to catch, it is for the others. We talk to one another. And we need some regulation in how this complicated Federal Government—I am telling you, this is complicated.

But I am going to go back to Mr. Gibson, and ask him. Mr. Gibson, much of the fear generated around the National Ocean Policy is a concern that the intent of the policy is to create additional restrictions on traditional ocean users such as fishermen. Can you elaborate, sir, on your thoughts as to why there was a closure of Federal waters to fishermen in the Gulf of Mexico last year?

Mr. GIBSON. Sure. It was the result of a conflict between oil and gas development and fishing, and an absolute lack of a plan to—at that time the Mineral Management Service ignored warnings about the various safety devices that were, obviously, not so safe. And it was because of an absence of a plan and coordination across state and Federal agencies to respond to such a disaster. And it was just economically devastating. I can't—you know, I don't think anyone—I can't imagine why anyone who lived through that would be opposed to the National Ocean Policy.

Mr. SABLON. So can you share the reasons why this policy represents a positive change from what existed before?

Mr. GIBSON. Sure, sure. I mean, you know, Mr. Fleming asked me if I had anything in writing. Well, again, my attorneys told me that the States will have a seat at these regional planning bodies. So I am going to take them for their word; I don't pay them to lie to me.

But, you know, it is—you know, me, or Captain Zales, or anybody else like us, you know, if we go up to MMS and say, "Hey, we are worried about that thing blowing out and keeping us off the water for months, if not years," or, you know, impacting our businesses for decades on down the line—you know, as a side note, I was a child working in Alaska when the Exxon Valdez happened, I remember that quite vividly—you know, they would have just ignored us or laughed at us, or both.

So, you know, this gives us a chance to sit down and make our concerns heard. And in the context of drilling, you know, I am not opposed to it, but I want to make sure it is done safely.

Mr. SABLON. Yes, and I agree. I learned—with Mr. Markey and what he said earlier, that if you are not on the table you are on

the menu, I actually learned that first from Mr. Faleomavaega. Because, as delegates, we need to have a voice share, and we just speak out as loud as we can, because nobody really listens to us. But, man, we are always making noise.

And so—but thank you. Thank you all for your different point of views. And, Mr. Mannina, if we are going to get rid of lawyers, as Mr. Shakespeare said, Eni is one of those. So he meant that in well-intentioned.

Mr. MANNINA. Thank you, sir.

Mr. SABLAN. No, thank you. Thank you very much, Mr. Chairman. Thank you.

Dr. FLEMING. The gentleman yields back. And next is Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Mr. Chairman, I think it is great that—we need more doctors here in the Congress, because your great mission in this life is to heal, and not to conduct confrontations in all of this. But I do want to thank you for giving us this second opportunity to raise some questions, hopefully, and—as part of the dialogue.

I—Mr. Chairman, I am still learning how to speak English. So, in the process, I do want to associate myself with the comments made earlier by the gentleman from Massachusetts, our Senior Ranking Member of our committee, Mr. Markey, because I think he really put it right on the nail—is it the hammer and the nail, or the nail and the hammer—in terms of exactly the whole basis of how this policy, the National Ocean Policy, was developed. It didn't just come yesterday from Obama's brilliant thinking. This process has been ongoing, even from the time, as I recall, from President George W. Bush. This is how the whole thing initiated—was initiated.

And, like I said, I think one of the reasons why the President has taken this initiative to, by Executive Order, do this, is because Congress has failed for the last 10 years to come up with a national policy, by statute, on how to look at the importance of why the oceans is indeed a very, very important part of our ecosystem, to be sure that we look at the situation.

Right now, I have in my own district a proposal by NOAA to expand one of the national sanctuaries that is based in my district, five additional sites that NOAA has now developed in the past couple of years. And I raised some serious questions. The questions about marine protected area—that always seems to be the magic word, because immediately, my fishermen, and everybody in the fishing industry, “What, does this mean that we cannot go fishing there,” because the livelihood of our fishermen depends on this special area.

So, whether it be in my little district or throughout the country, as I notice, I think this has been the common concern by members of our panel who represent our fishing industry, and I absolutely—I support the concerns of our commercial fishermen, recreational fishermen, to make sure they have access to the fish that provides for their living.

So I—and I think I go back to my initial statement, Mr. Chairman. We have to strike a balance, just as if—as a matter of prin-

ciple, there seems to be a little disagreement with my colleagues about how the whole—this whole government came about.

Now, I realize—and if I am correct, Mr. Chairman, my limited readings about the Founding Fathers of our country—purposely, purposely established a three-branch government as a divided government. There was no intention that we are going to have one party, one government, one religion, because our Founding Fathers did not trust the nature of man. You know, one little saying, that power corrupts—absolute power corrupts absolutely. We are not going to have any more kings or emperors and all this sort, so that the legislature and the Executive Branch puts a check on each other. So it is a checks and balance.

So, I realize that some of my colleagues from the other side are raving about too much extension of over-reaching on the power of the President, or the Executive Branch of government. But there is a process in our Constitution if Members don't like the idea that the President over-reached himself in the issue of Libya, introduce a bill to prohibit the President from doing these kinds of things, because there is the balance, checks and balance system, as we currently have it.

So, what have we produced? As I hear in some quarters, we now have a dysfunctional government, where there is absolute partisanship so much that I believe, Mr. Chairman, our people, the American people, are tired of this. We seem to have forgotten the word in the process—it is compromise. You don't have to compromise your principles, but at least compromise so that something gets done here in our national government, so something gets done or something gets moving for the needs of the American people.

My question to our friends here—and now Mr. Mannina is smiling at me because I wanted to ask him a legal question—I know, until the second coming of the Savior, we are going to continue having legal questions about the Constitution, even in this issue that we are having here. I don't think there could ever be an agreement. But as—I sense, as a matter of policy, gentlemen, I think all our commercial fishing industry is asking for, as Mr. Markey had alluded to earlier, a seat on the table, or else you are going to be on the menu.

I think the question is, are your voices heard? That is why you have Members in your given district representing your interest, hopefully to bring it to the attention of this committee, so that—to make sure that your interests are given every thoughtful consideration. So I—oh, man. I haven't even had a chance to ask my 50 questions, Mr. Chairman.

[Laughter.]

Mr. FALEOMAVAEGA. But I do want to say to our friends in the panel, Mr. Chairman, absolutely, your serious concerns about the whatever that we do here in the Congress should be seriously considered, especially the interests of our fishermen. And I want to assure you that I have a very soft part of my life in terms of the needs of our fishing industry in this country.

Why do we have to import \$9 billion to \$10 billion worth of fish from foreign countries? Why? Because we don't produce enough fish domestically. What happens? We don't have fish farms. Our aquaculture development program is way out of whack. For some reason

or another, when I visit other countries, Mr. Chairman, unbelievable how far advanced they have been in doing fish farms. We can't even do it for some reason. And I don't think this goes against the needs of our commercial fishermen in that regard.

Mr. Chairman, thank you. I—thank you, gentlemen. I didn't ask my questions.

Dr. FLEMING. I thank the gentleman, the gentleman yields back.

In the closing moments, I really have one more question, so I will—and I will certainly open it up for the panel for any last-minute random questions, as well. Before I ask my question, however, I do want to note that earlier this week nine Senators have asked Senate Commerce Committee to request oversight hearings on the National Ocean Policy. So certainly they are engaged and concerned, as well.

Now, Mr. Mannina, before I ask you this question, I want to preface it with this statement. There is a difference between having input and having a seat at the table. And that is something I learned very quickly up here. I have seen over and over and over again where rules have been created, some kind of regulation promulgated, and there is a request for public input, and the public comes back and says, "No, this is really dumb," overwhelming articulate arguments and so forth, and then agency goes on and does exactly what it wants to do. So, I am very cynical about that.

And, Mr. Gibson, quite frankly, I think it is naive to believe that just having input is of any value. So the question is, do you have a seat at the table? Do stakeholders have a seat at the table? So that is what I want to ask you, Mr. Mannina. Under the Executive Order, can any stakeholder have a seat at the table of the regional planning bodies?

Mr. MANNINA. The Executive Order limits the ultimate decision-making authority to Federal agencies and to the National Ocean Council, with its at least 23 members. That is your governing body, and there is not—it is strictly a Federal body, sir. So, at the end of the day, no matter what input is provided, the Federal Government will make the decisions that it believes to be appropriate.

And you raise an interesting question. Because when agencies issue regulations, it is typically through the Administrative Procedure Act, and there is public comment.

Dr. FLEMING. Right.

Mr. MANNINA. The agency receives it and decides what it believes is appropriate. Under the terms of the Executive Order, once the National Ocean Policy is promulgated, it says that agencies will implement whatever policies and regulations are necessary. The National Ocean Policy will tell the agency what to do. So, no matter what the public comment might be, the outcome is already determined through the National Ocean Policy. And that is why I suggested earlier that I think it is up to you gentlemen and your colleagues in the Congress to decide what kind of policy you wish, and how you want the administration to implement it. Because, as it exists now, the administration will move forward in the manner that it believes to be appropriate, and I think it is going to lead to, mercifully, much litigation, sir.

Dr. FLEMING. Right. Well, and again, what we are really talking about here is that the only decision-makers are from the Federal

Government. And the only Federal Government decision-makers are from the Executive Branch.

Now, the Constitution that I learned about in school when I took civics and history said that the Members of Congress represent their districts and their constituents, that we are the ones who represent the views and the attitudes of the American citizens. So we are totally shut out of this process, the so-called inputs of stakeholders, see, where there is actually no force from that whatsoever. And so, again, that begs the question: Is this not really all coming from the Executive Branch?

So that is really kind of the thing I wanted to be sure—did you have another comment, Mr. Mannina?

Mr. MANNINA. I was just going to say, Mr. Chairman, that the Supreme Court in 1996, in a case called *Loving v. United States* echoed your views, saying that the Constitution does lay out the roles and responsibilities of each branch, but that the congressional branch is—and I am not going to quote—the one most capable of responsible and deliberative law-making. Ill-suited to that task is the presidency and the judiciary.

And so, I think that if this actually becomes a constitutional fight, that there is a reasonable chance that, falling back on existing Supreme Court precedent, that this National Ocean Policy would be called into serious question.

Dr. FLEMING. Right. So, apart from the constitutional question, basically we have all the decisions made by the Federal Government, all of that in the Executive Branch, and that, indeed, it does have enforcement powers through the agency itself, not constitutionally, but in a—reality on the ground, that is the way it would work, until such time as the Supreme Court would step in.

With that, I will yield to Mr. Sablan, if you have any further questions, sir.

Mr. SABLÁN. Yes, just Mr. Mannina. We have only been part of the United States for, what, 34 years? You are telling me that this issue has existed because it is a constitutional question for over 200 years.

Mr. MANNINA. The issue of the separation——

Mr. SABLÁN. Of——

Mr. MANNINA. I am sorry——

Mr. SABLÁN. Presidential authority to do what President Reagan, President Bush, President Obama is doing, it is not an issue between the Congress and the President. It is a Presidential authority that has been used by presidents.

Mr. MANNINA. The President——

Mr. SABLÁN. And the court hasn't said no.

Mr. MANNINA. Thank you, sir. The President does have the authority to issue regulations to implement statutes. But that authority is delegated from the Congress. And it is my view, sir, that the Congress has not delegated this authority to the President in this—for the National Ocean Policy.

I was also interested in your citation to Executive Order 12291, because in preparing for this presentation I read a number of legal commentaries, many of which focus on that Executive Order. And all the scholars asserted that they thought it was beyond the Presi-

dent's authority under the Constitution. Now, why that was not litigated is a matter that I will leave to my colleagues at the bar.

But I would submit to you that if the National Ocean Policy moves forward, the stakes are so high that there will be litigation to try to define what the proper authorities are, unless and until the Congress does that in a manner it thinks appropriate.

Mr. SABLON. Right. And I was just making that statement also, just to reflect that it is not just this President that is using this authority—and it is, again, President Reagan, President Bush—I guess I am old enough to remember President Reagan, too, but—and just one last question, Mr. Chairman, if I may.

Mr. GIBSON. Are fishermen allowed to be members of the regional planning bodies, provided that they hold office at either the State, Tribal, or local level?

Mr. GIBSON. All of the people that sit on the South Atlantic Council on behalf of the States are fishermen. And those are the people that, it is my understanding, would represent us. I have enormous confidence in all of them, they are personal friends.

Mr. SABLON. So there will be a mechanism for fishermen to participate in the planning process.

Mr. GIBSON. Yes. And there will also be subcommittees and advisory panels, and things like that created.

Mr. SABLON. I can never say no to my—Mr. LeBlanc, please.

Mr. LEBLANC. No, I appreciate that. And it is my understanding that—when the presentation or the proposal of having a representative of the Regional Fishery Management Councils on the RPBs was offered, the response was, “Yes, provided that they are a Federal, State, or Tribal member of the council.”

Mr. SABLON. Yes, right. No, I understand that.

Mr. LEBLANC. So public citizens that are on the councils can't be on the RPBs.

I would—just one quick comment, just to stretch Mr. Markey's analogy about tables and menus, if you are a sheep invited to a table of wolves, you quickly become on the menu, even if you have been offered a seat.

Mr. SABLON. Well, that is a little complicated for this new American, Mr. LeBlanc.

[Laughter.]

Mr. SABLON. But Mr. Landry and I were talking one time. He is a sports fisherman. And he said, “You have fish on your island?”

And, of course, you know, we—I said, “The only—you are welcome to come and fish on my island, I will bring you there, if you want, with—one condition is that you cannot catch and release a fish. Where I come from, you catch and eat a fish.” So that is the deal we made.

I mean this is important to us, sir. And while I have disagreements also with fisheries regional councils, again, I am not joking when I say that back home I grow up and I still today, if I choose to have three or four meals a week with fish, and I can have different assortments, and this is true, both the conservation—and we need to continue this, because it is part of our lives. It is not a business to us, sir. It is who we are. And this is how important this issue is to us.

So, thank you, Mr. Chairman, for holding this important hearing. Thank you, everyone, for sharing your thoughts with us.

Dr. FLEMING. I thank the gentleman. The gentleman yields back. And I will add to that, that it is a fascinating discussion, even involving discussions of the Constitution, which makes it so interesting for us, and hopefully the panel and those who join us here today.

The members of the Subcommittee may have additional questions for the witnesses, and we ask that you respond to these in writing. The hearing record will be open for 10 business days to receive these responses.

Finally, I want to thank Members and staff for their contributions to this hearing.

If there is no further business, without objection, the Subcommittee stands adjourned.

[Whereupon, at 11:12 a.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

[A letter submitted for the record by Aaron Longton, F/V Goldeneye follows:]

F/V Goldeneye
Aaron Longton
PO Box 1486
Port Orford, OR 97465

March 19, 2012

Thank you for the opportunity to provide testimony on this important issue.

I am a commercial fisherman from Port Orford, Oregon. I've commercial fished for fifteen years for salmon, tuna, halibut, and groundfish. During my fishing career I have seen ocean issues neglected by the federal government and I believe it is time now to focus on an enormous asset for the United States, our oceans.

Anyone who pays attention is well aware that the competing use for space in our ocean is increasing. In Oregon, we are dealing with what are essentially zoning issues for competing ocean uses for fishing, recreation, wind and wave energy, and marine reserves sites for areas closed to fishing. An additional emerging issue is off-shore aquaculture. Without a comprehensive plan through a stakeholder-driven process, there is certainly going to be conflict between different stakeholder groups and a lack of a sensible resolution. The National Ocean Policy provides us with the tools to come to the table and solve this marine puzzle. We need funding for National Ocean Policy so this critical issue of competing uses of the ocean can be addressed.

From a fisherman's standpoint, I worry that if we miss this opportunity to fund and implement National Ocean Policy and this opportunity to plan for inevitable change there will be big winner and big losers instead of an organized process that provides for all uses. All stakeholders, including fishermen, should take seriously this opportunity to represent their interests rather than be marginalized by non-participation or hasty top-down decisions.

This accelerated demand for uses in the ocean shows no sign of slowing down. Now is the time to fund and implement National Ocean Policy to help the United States use our public resource, our ocean, effectively.

[A statement submitted for the record by the Shinnecock Indian Nation follows:]

SHINNECOCK INDIAN NATION
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Written Testimony of SHINNECOCK INDIAN NATION
Submitted by Gerrod Smith, Trustee
Salvatore Ruggiero, Advisor

March 22, 2012

The Honorable Doc Hastings
Chairman
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

The Honorable Edward J. Markey
Ranking Member
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

The Honorable John Fleming
Chairman
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
U.S. House of Representatives
Washington, DC 20515

The Honorable Gregorio Sablan
Ranking Member
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
U.S. House of Representatives
Washington, DC 20515

As an indigenous coastal community, the Shinnecock Indian Nation, a Federally Recognized Indian Tribe is concerned with issues regarding the ocean and its bounty. After all, we are surrounded by the great waters of Peconic Bay, Shinnecock Bay and the ever majestic Atlantic Ocean. These waters have sustained us since time immemorial.

In fact it was our ancestors who welcomed the English settlers. One of the many things we shared was our method of whaling, and this collaboration helped create the first industrial revolution.

The need for collaboration has never been greater. By 2030, the world will need at least 50 percent more food, 45 percent more energy and 30 percent more water, according to U.N. estimates, at a time when a changing environment is creating new limits to supply.

The National Ocean Policy creates a platform in which all parties can share their specific concerns and collaboratively work together for the benefit of all. The National Ocean Policy creates a bottom up approach and not a top down bureaucratic exercise. It supports our coastal communities and improves government efficiency leading to better results for all interests. We need the National Ocean Policy in order to prepare our coastal communities and country for the future.

The National Ocean Policy allows all concerns to have a voice at the table, including commercial and recreational fishermen. It does not exclude their participation; in fact it welcomes and needs their input in order to produce true and effective regional ocean planning partnerships. We need to work with fishermen to ensure a continued supply of safe seafood and to help protect healthy coastal communities.

The National Ocean Policy can help create opportunities for fishermen to diversify in sustainable ways by encouraging responsible development of ocean and coastal resources like offshore renewable energy and shellfish production, and by making sure uncoordinated ocean development does not harm ecosystems, fisheries or cultural resources.

We can choose to watch and observe and not be moved by the facts, or we can embrace the challenges that lie ahead. Let us join together to create better communities, a cleaner and safer future for our children, and the hope of what we all strive for—a peaceful and prosperous existence.

